DOCUMENT RESUME

ED 448 901 PS 029 126

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TITLE Rights of the Child in South Africa: Violence against Girls in South Africa.
INSTITUTION World Organisation Against Torture (OMCT), Geneva (Switzerland).
PUB DATE 2000-01-00
NOTE 69p.; Report prepared by the World Organisation Against Torture (OMCT) for the Committee on the Rights of the Child and presented at a Session of the Committee on the Rights of the Child (23rd, Geneva, Switzerland, January 2000). Beth Krzyznowski also contributed to this report.
AVAILABLE FROM OMCT, P.O. Box 21-8, rue du Vieux-Billard, CH 1211, Geneva 8, CIC, Switzerland. Tel: 4122-809-49-39; Fax: 4122-809-49-29; Web site: http://www.omct.org; e-mail: omct@omct.org.
PUB TYPE Reports - Evaluative (142) -- Speeches/Meeting Papers (150)
EDRS PRICE MF01/PC03 Plus Postage.
DESCRIPTORS Child Abuse; Child Advocacy; Child Safety; *Child Welfare; Childhood Needs; Children; *Childrens Rights; Civil Rights Legislation; Compliance (Legal); Family Violence; *Females; Foreign Countries; Government Role; Law Enforcement; Safety; Victims of Crime; Well Being
IDENTIFIERS Equal Access; *South Africa; Torture; Torture Victims; *United Nations Convention on Rights of the Child; Victimization

ABSTRACT

This report to the United Nations Committee on the Rights of the Child contains observations of the World Organisation Against Torture (OMCT) concerning the application of the U.N. Convention on the Rights of the Child by the nation of South Africa. Noting that the Convention is the only "mainstream" human rights instrument that explicitly states the rights apply equally to female and male children, the report first provides observations and recommendations concerning violence against girls in South Africa. General observations in this area indicate that despite Government efforts at the legislative, policy, and awareness levels, there remain, both in law and practice, discrimination against girls and conflict between the constitution and religious and customary laws which perpetuate harmful practices against girls. This section then examines: violence against girls in the family, including early marriages, bride prices, genital mutilation, and virginity testing; violence against women in the community, specifically rape, and trafficking and prostitution; and violence perpetrated by the state, noting emotional, physical, and sexual abuse of children in residential facilities such as prisons. The remainder of the report examines application of the U.N. Convention. The introduction for this section notes the new constitution and several human rights treaties signed by South Africa. The section then notes the discrepancies among these treaties and between common law and customary rulings with regard to the definition of the child. Constitutional and legislative provisions are then noted in the areas of: child protection against all forms of discrimination; best interests of the child; right to participation; freedom from torture, inhumane and degrading treatment or punishment; deprivation of liberty; sexual exploitation and abuse; child

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labor; refugees and asylum seeker children; and children in conflict with the law. The concluding section notes that while the government of South Africa has adopted several measures and introduced a number of amendments to fit domestic legislation to the U.N. Convention, there are still many gaps and contradictions at the legislative level, and several problems have arisen from the economic and social conditions of the country. Specific recommendations are offered. (HTH)

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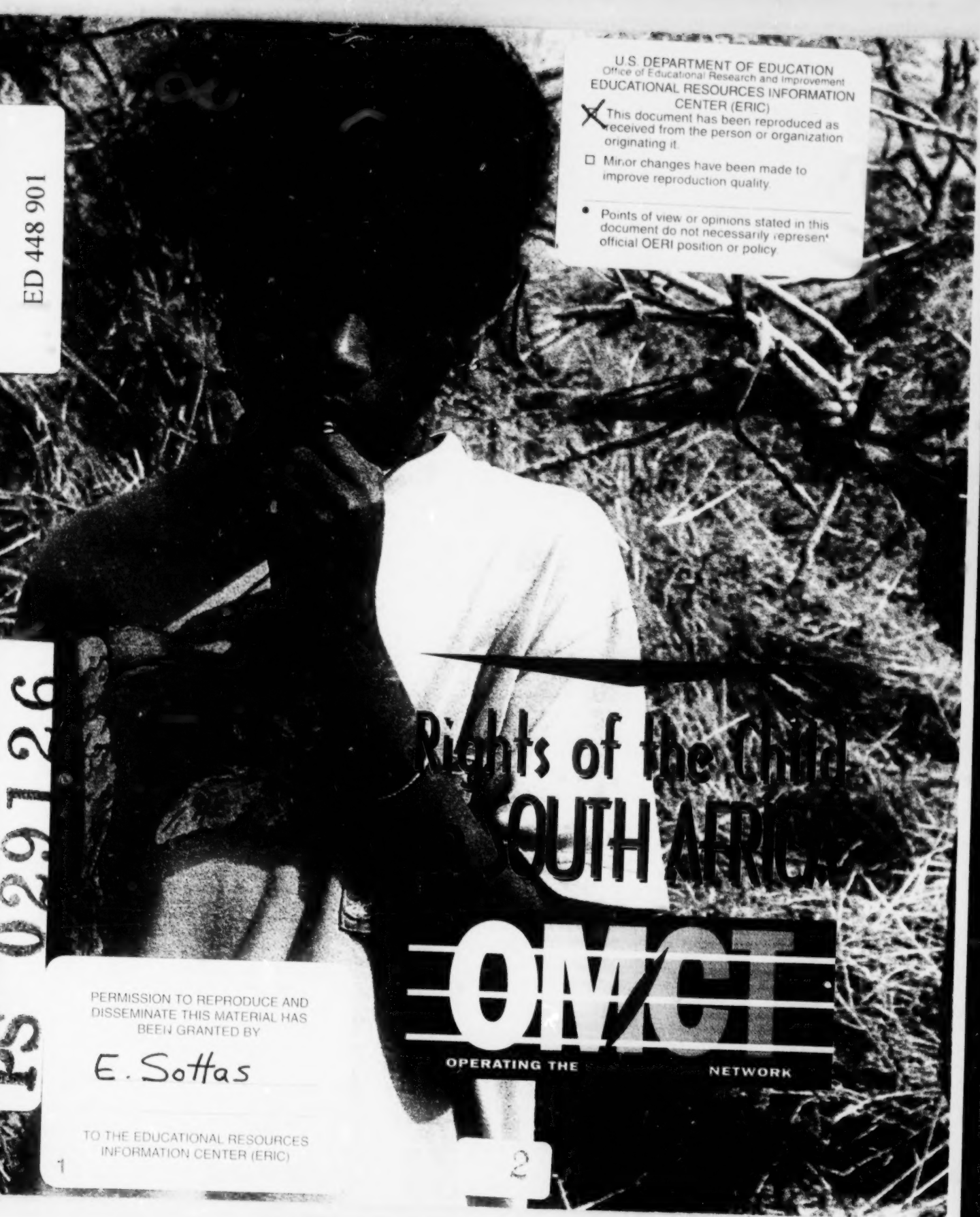

Rights of the Child
SOUTH AFRICA

OMCT

OPERATING THE NETWORK

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Rights of the Child in SOUTH AFRICA

OMCT

"OPERATING THE 'SOS-TORTURE' NETWORK"

The aim of OMCT country reports is to prevent torture

In its reports on children's rights, OMCT aims to analyse national law in terms of the international commitments that a government has made – for example, in some countries families are not informed when their child is detained and this removes a precious safeguard against abuse. The absence of such safeguards facilitates situations where the torture of children can and does occur.

In other words, the reports aim to point out where, often unknowingly, legislation facilitates grave abuses against children.

The legal analysis is supported, where possible, by urgent appeals on the torture of children documented by OMCT. These urgent appeals (OMCT intervenes almost daily on such cases) are the foundation of all our work.

The reports are not legal semantics for their own sake, but represent, in addition to the urgent actions, another side of our strategy to end torture. The reports include meaningful and feasible recommendations for legal reform aimed at reducing the incidence of child torture.

The reports are presented to the United Nations Committee on the Rights of the Child who use them to analyse how well a country is fulfilling its international commitments with regards to children. Their recommendations on the issue of torture, drawing from OMCT's reports, send a strong message from the international community on the need for action to end the torture of children.

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COMMITTEE ON THE RIGHTS OF THE CHILD
23rd Session - Geneva, January 2000

VIOLENCE AGAINST GIRLS IN SOUTH AFRICA

Report Prepared by the
World Organisation Against Torture
(OMCT)
for the
Committee on the Rights of the Child

Researched and written by Carin Benninger-Budel
with thanks also to Beth Krzyznowski for her contribution to this report
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I. Preliminary Observations

The submission of information specifically relating to violence against girls to the Committee on the Rights of Child, besides the global alternative report on the Rights of the Child in South Africa of the World Organisation Against Torture (OMCT), forms part of OMCT's women's programme which focuses on integrating a gender perspective into the work of the United Nations Human Rights Treaty Bodies. OMCT's gender analyses and reporting entail examination of the effects of gender on the form which the human rights violation takes, the circumstances in which the abuse occurs, the consequences of those abuses, and the availability and accessibility of remedies.

South Africa ratified the Convention on the Rights of the Child on 16 June 1995. It should be noted that the Convention on the Rights of the Child is the only "mainstream" human rights instrument currently in force which constantly uses both feminine and masculine pronouns in its provisions, and which makes it explicit that the rights apply equally to female and male children. Moreover, the Convention stresses in article 2(1) of the equal protection norm by providing that: "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's (...) sex (...)."

The Convention on the Rights of the Child includes the protection of girls from physical or mental violence in their homes, in the community as well as performed by State actors, in its provisions. It states in article 19 (1) that "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." Article 24 (3) argues that "States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children." In addition, article 34 declares that "States Parties undertake to protect the child from all forms of sexual exploitation

and sexual abuse." Norms applicable to violence against girls detained in penal or psychiatric institutions include: article 37 (a) which declares that "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment." and article 37 (c) which provides that "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of her persons of her age." Article 39 provides that "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any form of cruel inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self respect and dignity of the child."

Moreover, the reporting guidelines of the Committee on the Rights of the Child contain an umbrella clause which requests States parties to provide gender-specific information, statistical data and indicators on various issues covered by the Convention on the Rights of the Child. Moreover, the particular situation of the girl child is also dealt with more specifically with regard to certain articles. For example, with respect to article 1 of the Convention (definition of the child), the Committee on the Rights of the Child has identified gender-specific issues of particular relevance to the girl child, such as the linking of the age of criminal responsibility to the attainment of puberty and the minimum age for marriage which is particularly problematic in cases where it is set very low. With respect to article 2 (non-discrimination), States parties are requested to provide information "on the specific measures taken to eliminate discrimination against girls and when appropriate indicate measures adopted as a follow-up to the Fourth World Conference on Women."[1]

South Africa also acceded to the Convention on the Elimination of All Forms of Discrimination against Women, without reservations, on 15 December 1995. In General Recommendation 19, the Committee on the Elimination of Discrimination against Women concluded that gender-based violence is a form of

1 - U.N. Doc. CRC/C/58, para. 28.

discrimination against women as defined under article 1 of the Convention.[2] South Africa is also party to other international instruments relating to human rights which prohibit violence against women, inter alia: the International Covenant on Civil and Political Rights of which article 2 prohibits discrimination on the basis of sex, article 3 guarantees "the equal right of men and women to the enjoyment of all rights set forth in the Covenant", article 6(1) protects the right to life, article 7 prohibits torture and other cruel, inhuman or degrading treatment or punishment, article 9(1) protects the right to liberty and security of person, and article 24 promises children protection by the state without any discrimination on the basis of *inter alia* sex; and the Convention against Torture provides protection against violence in a more detailed manner.

In 1993, the UN adopted the Declaration on the Elimination of Violence Against Women which asserted in the preamble that female children are especially vulnerable to violence. Moreover, article 2 of the Declaration recognises sexual abuse of female children and female genital mutilation as forms of violence against women.

The human rights of the girl child are referred to as one of the twelve Critical Areas of Concern of the Beijing Platform for Action adopted at the Fourth World Conference on Women: Action for Equality, Development and Peace in 1995 under the strategic objectives and actions L, since in many countries available indicators show that the girl child is discriminated against from the earliest stages of life, through her childhood and into her adulthood. Strategic objective L.7 concerns explicitly the eradication of violence against the girl-child.

It should be noted that, according to Section 231 (4) of the South African Constitution, any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament. It is therefore necessary to enact legal reforms in order to invoke the Convention on the Rights of the Child before courts in any judicial proceeding.

2 - U.N. Doc. HRI/GEN/1/Rev.2.

The government has sought to bring legislation, policy and practice in line with the requirements of the Convention on the Rights of the Child, which is first of all reflected in Section 28 of the Bill of Rights of the Constitution, which specifically deals with the rights of children, and, moreover, in other various legislative innovations that have been enacted to protect children, including girls. However, there is still an urgent need to review and revise legislation and policies in order to being fully able to invoke the rights contained in the Convention on the Rights of the Child in the national courts.

II. General Observations

The OMCT notes with satisfaction the efforts undertaken by the Government at the level of legislation, policies and awareness raising to redress the effects left by apartheid on women and to achieve gender equality. The inheritance of apartheid comprises widespread discrimination and underdevelopment for women, which is visible in the violence against women and children.

It also recognises the crucial role women have played in the country's transition to a democratic, multiracial society, as well as their continuing participation in and contribution to the construction of an environment that respects human rights. Moreover, an Office on the Empowerment of Women has been established within the President's office to develop a women's empowerment policy for the new Government. OMCT expresses its appreciation that South Africa adopted a national machinery with a multi-strategic approach to gender mainstreaming, including child programmes.

The new Constitution of South Africa guarantees in Section 9 equality between men and women and prohibits discrimination on the basis of, *inter alia*, gender, sex, pregnancy, marital status and age. It also places an injunction on the Government to enact legislation as soon as possible to prevent or prohibit unfair discrimination. However, OMCT notes the absence of a definition of gender discrimination in the Constitution.

Progress has been made in bringing customary law in line with constitutional provisions. For example, in November 1998 the Parliament passed a new bill: the recognition of Customary Marriages Bill, which recognises customary marriages, both monogamous and polygamous, but still does not outlaw polygamous marriages. The Bill includes a number of safeguards for girls, including a minimum age of 18 and the consent of both spouses to enter such marriages and a court decree to dissolve them. The Child Care Amendment of 1996 recognises indigenous and religious marriages, as well as adoption and legal representation of children.

However, there remains both in law and practice, discrimination against girls. Moreover, there continues to be a conflict between the constitution and religious and customary laws which perpetuates harmful practices against girls.

For example, at the *de jure* level, according to statutory offences, it is illegal for a male person to have sexual intercourse with a girl under the age of 16. However, concerning boys, it is illegal to commit indecent acts with a boy under the age of 19.[3] In addition, in the Marriage Act of 1961, boys and girls have different legal ages of when they are able to contract a valid marriage. No boy under 18 and no girls under 15 can contract a valid marriage without the permission from the Minister of Home Affairs, indicating another discriminatory law on the basis of sex. Moreover, no girl below the age of 12 or boy below the age of 14 may marry.

Although the South African report, submitted to the Committee on the Rights of the Child (CRC/C/51/Add.2) approaches these subjects and expresses concern for the vulnerability of the girl child, its treatment remains very superficial. For example, within the chapter concerning education, the report states in paragraph 386 that, "girl children drop out of school earlier than boy children." However, this situation is not addressed in the future plans of reform for South Africa. A dropping out of school early has serious consequences for the well-being of girls and women in terms of i.e. empowerment, paid employment, health, access to remedies. Violence against women is a manifestation of unequal power relations between men and women.

3 - The Law of South Africa, Volume 6, Statutory Offences, para. 136, p. 434.

In addition, paragraph 601 states that "At the same time there is a need to ensure that traditional practices, particularly where they affect the girl child, comply with the requirements of the Constitution and the Convention." However, concrete plans and projects have not been provided.

Overall, OMCT is concerned by the fact that while the South African report addresses subjects such as violence, health standards, family environment and traditional practices prejudicial to health, the information provided on violence against girls does not seem not sufficient enough to comprehend the grave situation in which girls exist. Significant violations that are frequently perpetrated against girls are absent from this report. For example, a section concentrated on traditional practices is included in this report, however, female genital mutilation, is not mentioned. Moreover, in paragraph 254 it states that, "Rape and sexual abuse of children are increasing rapidly and are a matter for grave concern". While boys are also vulnerable to rape, it is well known that rape whether it be gang rape, statutory rape, or any other type of rape is one of the major violations that plague girls in South Africa today.

III. Violence in the Family

III. 1. Domestic Violence

A large percentage of girls in South Africa appear to suffer from domestic violence. A study was recently conducted in Khayelitsha by the Medical Research Council on a group of 24 teenage girls, between the age of 14 to 18 years. The study discovered that, "men controlled sexuality, defining 'teenage love' as penetrative sex and using violence from the beginning of relationships to force sex on their girlfriends".[4] It stated that, "All but one young woman described assault as a regular feature of sexual relationships, and some

4 "Violence Sets Teenage Sex Rules, *Independent Newspapers*, 14/01/98, http://www.womens-ner.org.za/pvaw/understand/teenage. htm>.

said that this was the main reason they continue to have sex." Another study was conducted in Cape Town with 600 girls, some of them pregnant. It was discovered that 60 percent of 600 had been beaten by their partners.[5]

OMCT welcomes the fact that South Africa has introduced legal procedures for obtaining protection through the Prevention of Family Violence Act (Act n° 133 of 1993) and through the Domestic Violence Bill (1998). The Prevention of Family Violence Act no. 133 of 1993, protected children from domestic violence under Section 2 part (a) by stating, "not to assault or threaten the applicant or a child living with the parties or with either of them." However, this Act granted only protection to women who live together with the violent partner, which excludes women who do not live with them, and other forms of relations, i.e. dating; the most common relation form of girls.

However, the Domestic Violence Bill (1998), which repeals the Prevention of Family Violence Act, is a far more progressive instrument, which, among other steps forward: (1) enlarges the definition of victims of domestic violence with "engagement, dating and customary relationship;"[6] (2) facilitates the obtaining of protection orders on abusers; (3) provides shelters for victims; and (4) recommends that the South African Police Service (SAPS) be sensitised to all aspects of domestic violence. Moreover, the Bill creates an obligation to report cases of suspected ill-treatment of children. Unfortunately, according to reports, this law has not achieved implementation as of yet.

Moreover, women victims of violence in general, and of domestic violence in particular, are still reported to face hostility when dealing with the police as well as discriminatory and sexist assumptions when dealing with the judicial system.[7] Moreover, although protective legal measures against violence against women have been taken, the number of shelters catering for abused women and girls around the country remains insufficient.[8] As a

5 - *Ibid.*

6 - Article 1 (vi) (f).

7 - Human Rights Watch, *South Africa, Violence Against Women and the Medico-Legal System*, August 1997, vol. 9, no 4 (A), p. 13.

8 - "Women's Rights", in *Human Rights Committee of South Africa*, August 1996, p. 26.

13

consequence, a limited number of women press complaints under the law, even if their child is being abused, despite government and NGO efforts to increase public awareness of the various existing mechanisms.

III. 2. Early Marriages

Minors under the age of 21 require parental permission to marry. Furthermore, the marriage Act (1961) provides that no boy under the age of 18 years and no girl under the age of 15 years can contract a valid marriage except with the written permission from the Minister of Home Affairs. One explanation for this difference in age is that girls mature earlier than boys.[9] No girl below the age of 12 or boy below the age of 14 may marry. This practice is discriminatory. Moreover, it should be recognised that customary law prescribes no age for marriage.[10]

Betrothal of children is prohibited. However child marriage is practised in some South African cultures. It also occurs within some religious groups, particularly where arranged marriages are common. Girls have very little choice in these types of marriages as it is the families who choose.

Yet, early marriage leads to early childhood/teenage pregnancy. Childbearing during early or middle adolescence, before girls are biologically and psychologically mature, is associated with adverse health outcomes for both the mother and child. Moreover, infants may be premature, have a low birth weight, or be small for gestational age.[11] It furthermore adversely affects the education and employment opportunities of girls and as a result their economic participation rate.

III. 3. Bride Prices

The practice of bride price (lobola) still exists in a cultural and social context in South Africa. This custom often results in violence against women or girls as it leads a man to believe that he has bought and, therefore, owns his wife.

9 - UN. Doc. CEDAW/C/ZAF/1, p. 107.

10 - A woman is a perpetuated minor. She does not have the right to own, buy or sell property.

11 - WHO Doc., *Violence Against Women*, WHO/FRH/WHD/97.8.

III. 4. Genital Mutilation

OMCT notes with concern that the practice of female genital mutilation has not been given attention in the South African State report CRC/C/51/Add.2, while it suggests in paragraph 603 that circumcision of boy children is another area requiring study. However, female genital mutilation is reported to be practised in the areas of the Eastern Cape and KwaZulul-Natal, and therefore also needs further research.[12]

This practice has a terrible effect on the child or young girl's state of health, both at the time and in the future. Apart from potentially fatal haemorrhages, there is a risk of tetanus or septicaemia from the very basic instruments used and neighbouring organs are often damaged due to the girl's agitation. The practice of female genital mutilation violates the right of the child to the "enjoyment of the highest attainable standard of health", as stated in article 24 (1) and ignores section (3) which works to abolish all traditional practices that are prejudicial to the health of a child.

III. 5. Virginity Testing

Virginity testing is yet another traditional practice in violation of human rights which is becoming more prevalent today in South Africa.[13] Multiple teenage girls lie down in a row in front of large crowds and have female examiners probe them for intact hymens.[14] However, not only is the physical process degrading for the girls, but the importance that is placed on the virginity diminishes a girl's self worth and perpetuates the inferior status of girls based on their sex. It violates a girl's dignity and privacy.

12 - See also UN. Doc. CEDAW/C/ZAF/1.

13 - Gisèle Wulfsohn, *Virginity Testing: The Girls Who Have to Prove They Are Pure*, in Marie Claire, UK Edition, Oct. 1998, p. 46-50.

14 - *Ibid.*

IV. Violence against women in the Community

IV. 1 Rape

Although South Africa enjoys huge international respect because of its successful emergence from the nightmare of apartheid, it has reportedly the highest frequency of rapes in the world. OMCT is particularly concerned by the increase of rape and sexual abuse of young girls.

A survey done by CIET africa, in partnership with Johannesburg's Southern Metropolitan Local Council (SMLC), shows that in 1997, 3 out of 10 women in the SMLC area were victims of sexual violence. One third of all rapes committed in this area were carried out by men known to the victim – a neighbour or an acquaintance – and the last third of rapists were strangers to their victims. A small percentage of rapes (0.9%) were gang rapes, commonly called Jack Rollers, and were also the most violent and least reported. [15]

Certain studies have been conducted in order to obtain an idea of the sexual violence that girls are enduring. According to an article which focused on how violence sets the standards for sexual intercourse in South Africa, "earlier studies in South Africa into first time intercourse had found that 30 percent of girls were forced to have sex."[16] "The average age of girls who are sexually abused is 11 years of age."[17]

The situation is reportedly so grave that rape and other forms of violence have been deterring girls from attending school. According to the South African State report to the Committee on the Elimination of Discrimination Against Women for 1998, many cases of girls being raped, harassed, and assaulted on or surrounding school grounds by either teachers, fellow students, or outsiders have been reported.[18] Additionally, it was concluded in a report by Africa Watch in 1994, that many girls in

15 - ANC Daily News Briefing, *One Rapist Convicted for Every 400 Women Raped: Survey*, 10 October 1998, an cdip@wn.apc.org.

16 - Violence Sets Teenage Sex Rules, see note 4.

17 - "Statistics on Violence Against Women in South Africa and Internationally." *NICRO Women's Support Centre*, Oct. 1998, . <http://www.womensnet.org.za/pvaw/understandcrimestats.htm>.

18 - U.N. Doc., CEDAW/C/ZAF/1, 25 Feb. 1998, p. 119.

16

South Africa stopped attending school and often were unable to leave their homes at night in fear of being raped.[19] Headmasters of 15 farm schools in and around Johannesburg believe that more than three quarters of their students are the victims of abuse and sexual harassment.[20]

The survey conducted by CIET Africa indicated that one rapist was convicted for every 400 women raped in 1997. Prosecutors and police said that this low rate of conviction occurred because 50 % of the women withdrew their cases because they were not prepared to deal with the court system.[21]

OMCT expresses its fears that, given the persistent overall high levels of crime and violence in the country, there is a danger that efforts to address violence against women and girls, although identified as a priority area in the National Crime Prevention Strategy, may become submerged in the overall struggle against violence in South African Society.

In her report on her mission to South Africa in October 1996, the Special Rapporteur on violence against women, its causes and consequences, noted that the training and specialisation of police officers with regard to sexual violence and rape varied greatly, depending on the individuals and on each police district.[22] She also reported that in her discussions with NGOs and women's support groups the judiciary was heavily criticised for being gender-insensitive - with the exception of the Wynberg Court in Cape Town specialised in sexual offences - subscribing to myths and stereotypes surrounding women, which are therefore reflected in the judgements.[23]

In South Africa, rape is defined as intentional, unlawful sexual intercourse with a woman without her consent. Rape is committed only by penetration of the woman's vagina by the male's penis.[24] Sodomy, oral sex and penetration by foreign objects are not considered as rape, but as indecent assault. The definition of rape has been disputed by many women's organisations for its narrowness. It is contended that this crime punishes only one specific form of

19 - *Ibid.*
20 - *Ibid.*
21 - ANC Daily News Briefing, see note 15.
22 - U.N. Doc. E/CN.4/1997/47/Add.3, para. 32.
23 - Ibid, para. 45.
24 - Jonathan Burchell and John Milton, *Principles of Criminal Law*, second edition, South Africa, 1997.

sexual assault and only committed upon a woman or a girl. Moreover, the emphasis is put on consent and not on coercion, and the cautionary rule still requires the judge to take additional care when the testimony of a rape victim is not corroborated. The corroboration requirement has also been subject to considerable criticism. Although the rationale behind the cautionary rule is to ensure that rape victims do not bring false charges, this rule – by reinforcing judicial stereotypes about raped women – often makes it more difficult to convict a rapist and perpetuates the "idea that rape complaints are generally false and that men are prevalently the victims of false charges".[25]

The girl child suffers from double discrimination: she is discriminated against because she is a girl and because she is a child. As the South African State report also mentions, rules of evidence require a child's evidence to be subjected to a cautionary rule, and some form of corroboration is required. In addition to these psychological effects, the legal process is yet another violation. The compounded effect of these cautionary rules, which apply when the child is the sole witness to a sexual offence, makes a conviction almost impossible. According to reports, apparently a girl's experience and evidence were not seriously considered by the police. In most cases nothing happens to the rapist and if the rapist is apprehended, he is usually returned to the community, indicating to the victim that she is helpless concerning her violation.[26] OMCT therefore very much welcomes the fact that the Supreme Court of Appeals has repealed some cautionary rules.[27]

Moreover, as has already been mentioned above, according to the Sexual Offences Act (1957) it is a criminal offence to have sexual intercourse with a girl below the age of 16 with her consent, although the court may consider certain mitigating factors. The statutory provision regarding criminalisation of sexual activity with a boy is 19. According to the Roman law principle applying in South Africa, a girl under 12 is irrebutably presumed incapable of consenting to sexual intercourse. The age of consent for a boy is 14.

25 - *Ibid.*

26 - *A Cry that No One Hears*, <http://www.wits.ac.za/csvr/artshar.htm>.

27 - Jackson vs S. (Case no.3597)

According to the UN Special Rapporteur on violence against women, the age for statutory rape should be set below the age of 18 in order to protect children from abuse.[28] However, the Special Rapporteur admits that, given the increase of sexual activity among teenagers in some countries, this may cause some difficulties.[29] It seems therefore that what is lacking in the statutory rape legislation is a conceptualisation in terms of power relationships.[30] In statutory rape cases, the need to determine whether the perpetrator was also a minor or an adult may be one way of moving forward with regard to this issue.

OMCT welcomes the fact that the South African Law Commission has appointed a project team to review the Sexual Offences Act of 1957 with the purpose of introducing new legislation on the protection of sexually abused children.

OMCT also expresses its grave concern over the HIV/AIDS epidemic in South Africa to which girls have become particularly vulnerable. There has recently been a dramatic increase in the number of preadolescent and adolescent girls with HIV, and it has been linked with rape and sexual abuse by adults. HIV/AIDS has become, in this respect, a gender issue that should receive particular attention.

IV. 2. Trafficking and Prostitution

OMCT welcomes the fact that the South African State Report CRC/C/51/Add.2 addresses the increasing commercial sexual exploitation of children as the phenomenon of child prostitution is becoming more and more prevalent, primarily in Cape Town, Durban, and Johannesburg. The child sex industry has become steadily more organised, with children being forced into prostitution or exploited by their parents to earn money for the family.

The Constitution explicitly states under Section 28 (d) that all children have the right to be protected from maltreatment, abuse, neglect and degradation. However, there is no clear definition of child abuse, child sexual abuse and child neglect in South African Law.

28 - U.N. doc. E/CN.4/1997/47, p. 11. See also the Convention on the Rights of the Child: a child is defined in the CRC in the article 1 of the CRC as, "(…) a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier."

29 - *Ibid.*

30 - *Ibid.*

The Sexual Offences Act of 1957 prohibits prostitution as well as keeping a brothel, prohibits parent/guardian procuring defilement of a child under 18 years and makes it a conspiracy to defile detention for purposes of unlawful carnal intercourse. It also prohibits the sexual exploitation of children in a sex-discriminatory way: that is, girls under the age of 16 and boys under the age of 19 years.

OMCT is deeply concerned about the fact that, similarly to rape cases, the evidentiary cautionary rules prevent the perpetrators of forced prostitution and trafficking to be punished. The cautionary rules apply to persons who are victims of sexual offences, where the person is a single witness and where the person is a child, and therefore making a conviction almost impossible whereas the child prostitute is at risk of conviction. It should be kept in mind that the child prostitute is the victim, in need of care and protection, and not a criminal.

OMCT welcomes that the Minister of Welfare has set up a multi-disciplinary task team to Develop a Plan of Action against sexual exploitation of children. OMCT would also suggest to looking into the gender aspects of sexual exploitation.

V. Violence Perpetrated by the State

The Constitution provides in Section 12 "Everyone has the right to freedom and security of the person, which includes the right – a) not to be deprived of freedom arbitrary or without just cause; b) not to be detained without a trial; c) to be free from all forms of violence from either public or private sources; d) not to be tortured in any way; e) not to be treated or punished in a cruel, inhuman or degrading way. The Abolition of Corporal Punishment Act (1997) has followed the Constitutional Court judgements and outlaws juvenile whippings. All statutory provisions allowing Courts to impose this kind of punishment have been repealed.

The overcrowding of prisons in South Africa is a matter of concern. Although, the

1996 Constitution, in section 28(1)(g), also makes the point that the child has the additional right to be "treated in a manner, and kept in conditions, that takes account of the child's age," the overcrowding has led to girls being detained together with adult women. For example, in the women's prison of Johannesburg, girls are kept with adults in the female section at Leeuwenkop.[31]

The South African State report CRC/C/51/Add.2 addresses the problem of emotional, physical and sexual abuse of children held in residential facilities, either by members of the staff or by other inmates. The report does not submit gender-aggregated information on violence in prison. However, the female sexuality of a girl makes her more vulnerable to a sexual form of torture in detention centres as elsewhere. OMCT fears that gender-inequality as well as the cultural aspects give rise to difficulties in the investigation, prosecution and sanction of the crime of rape. As has been discussed above, the cautionary rules will apply in cases of sexual violence in detention. Moreover, girls may be reluctant to seek redress by reporting a rape because of fear and shame and of the severe social repercussions that may follow. Consequently, the impunity of the perpetrator is disproportionately higher than is the case with other torture methods. OMCT would therefore urge the government to provide gender-aggregated information on torture in detention facilities.

VI. Conclusions and Recommendations

In South Africa, a country which enjoys huge international respect because of its successful emergence from the nightmare of apartheid, violence against women and girls is increasing, including rape, domestic violence, and prejudicial traditional practices. This is evidence of a widespread denial and contempt of female emancipation.

31 - Community Law Center, *Children in Prison in South Africa, A Situational Analysis*, p. 12-13.

While OMCT acknowledges that the South African State CRC/C/51/Add.2 report submitted to the Committee on the Rights of the Child addresses the fact that the girl child is particularly vulnerable to discrimination, the most pressing issue is the lack of gender-aggregated information in the report and certain typical gender-specific human rights violations such as female genital mutilation. It lacks reporting on the effects gender has on the form of the human rights abuse, the circumstances in which it occurs, the consequences of that violation to the victim and the availability and accessibility of remedies.

The new Constitution of South Africa is based on gender, age equality and non-discrimination. However, OMCT notes that South African Law contains no definition of gender-discrimination. OMCT would, therefore, recommend the adoption of a definition of discrimination in the Constitution and other legislation which reflects the definition contained in article 1 of the Convention on the Elimination of All Forms of Discrimination against Women.

OMCT welcomes all efforts undertaken by the Government at the level of legislation, policies, programmes and awareness-raising to redress the effects of apartheid and to achieve gender-equality. However, there continues to exist a conflict between the constitution and certain aspects of legislation, such as marriage laws and laws concerning rape. Moreover, OMCT is particularly worried by the traditional, social and cultural attitudes in the country, contributing to negative images of women which impedes their emancipation, perpetuates discrimination and leads to violence against women and girls in all spheres of life.

OMCT would, therefore, recommend that measures be designed to change the attitudes which allow such practices to happen and to enhance the status of women and girls in South Africa. OMCT would recommend that the government abolishes all discriminatory laws, such as customary and religious laws containing unequal inheritance rights, land rights, polygamy, and bride prices. The abolition of discriminatory laws is an important means to overcoming the low image of women and girls and the resulting violence against them.

Another important means to overcome the social cultural patterns of women's and men's roles in society is gender-sensitive training that should be extended to all

public sectors, including law-enforcement officials as well as public awareness raising campaigns for gender-equality. Furthermore, the government of South Africa should provide sufficient shelters and relief support for girls and women subjected to violence as well as inexpensive or free legal aid.

OMCT would recommend that the seriousness of rape should be emphasised and that effective preventive measures are developed. The laws concerning rape should provide for a broad, gender-neutral definition for rape which protects the victim against all forms of sexual abuse in a non-discriminatory way. Moreover, the evidentiary rules such as the cautionary rules and the requirement of corroboration should be repealed.

OMCT expresses great concern about the increase of trafficking and prostitution of children and of lack of adequate law in South Africa concerning this grave phenomenon. OMCT would recommend a complete prohibition of the commercial sexual exploitation of children. It would specifically propose that any person who commits a sexual act with a child for financial or other reward, favour or compensation be guilty of an offence; that a person who invites, persuades or allows any person to commit a sexual act with a child for financial or other rewards, favour or compensation be guilty of an offence; and that any person who participates in, or is involved in, the commercial sexual exploitation of a child be guilty of an offence. Moreover, it would amend those provisions which criminalise the women who are prostitutes. Another step that needs to be taken, in order to produce more productive measures to deal with the problem of trafficking, is to increase awareness and understanding of the seriousness of the issue in both official and societal circles. Public awareness campaigns need to be easily accessible. They should particularly point out the ways in which HIV/AIDS can be transmitted.

In an effort to combat inter-country trafficking and sale of women and children effectively, OMCT suggests that the government of South Africa increase its efforts in the area of bilateral and regional agreements with neighbouring countries to facilitate the repatriation of trafficked children and encourage their rehabilitation.

OMCT is concerned about the situation of girls in detention. OMCT would ask the

government to submit gender-aggregated data and to point out what measures they have taken to stop violence against girls in detention.

Finally, OMCT would insist on the need to implement all provisions of the Women's Convention, the ICCPR, the Beijing Rules and Platform for Action and the Declaration on the Elimination of Violence Against Women as they are the most relevant international instruments concerned with all forms of violence against women. OMCT would also recommend South Africa to ratify the Optional Protocol to the Convention, enabling the Committee to receive individual communications relating to South Africa and to conduct inquiries into grave or systematic abuse of women's human rights.

OMCT

Report concerning the Application of the Convention on the Rights of the Child by the Republic of South Africa

COMMITTEE ON THE RIGHTS OF THE CHILD

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INTRODUCTION

1. South Africa has experienced a number of rapid changes since the 1994 elections. Very important transformations have taken place. These changes have affected the entire South African reality and in particular its political institutions and judicial instruments.

2. A new constitution was adopted in 1996[1]; together with other legislative amendments such as the *Criminal Procedure Act* (1997), they have enhanced the creation of new political bodies (National Council of Provinces) and institutions (chiefly the Truth and Reconciliation Commission and the South African Law Commission), which may represent the basis for a real democracy based on the rule of law and the respect of human rights and freedoms.

3. The Republic of South Africa (RSA) has signed and ratified several international human rights treaties, which have become part of the domestic legislation. These instruments are enforceable before national courts such as the Convention on Refugees and its Protocol or the Convention on the Elimination of All Forms of Discrimination against Women. It has signed but not yet ratified the International Covenant on Economic, Social and Cultural Rights.

4. South Africa ratified the Convention against Torture on the 10th December 1998. The necessary legal reforms are expected to be enacted so that citizens may be able to invoke the Convention before Courts in any judicial proceedings as recognised in Section 231 of the RSA Constitution.[2]

5. At the regional level South Africa has ratified the African Charter of Human and Peoples Rights and is pending to ratify the African Charter on the Rights and Welfare of the Child. Equally, South Africa has signed and ratified the Convention on specific aspects of refugee problems in Africa sponsored by the Organisation of

1 - Act 108 of 1996.

2 - Section 231 RSA Constitution *"(4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation"*

African Unity. RSA is a party to the Geneva Conventions (1949) including the Additional Protocol I but not Protocol II.

6. South Africa ratified the Convention on the Rights of the Child on 16 June 1995. It appears that legislation as well as policy and practice have been reformed to comply with the Convention's provisions. The implementation of the "First Call for Children" adopted by the Reconstruction and Development Programme (RDP) has been one of the priorities of the Government of South Africa, carried out by the National Programme of Action[3] (NPA) involving government departments, non-governmental organisations and other child-related structures.[3]

7. Several legislative innovations regarding children's rights have passed into law. The *National Youth Commission Act* (1996)[4] set up a Commission to develop an integrated national youth policy and development plan. The *Legal Aid Amendment Act* (1996)[5] will ensure the right for every detained person (adults and children) to consult with a legal defender and, in case he or she is not able to afford it, to be provided with these services at the State's expense.[6]

8. The *Criminal Procedure Amendment Act* (1996) seeks to address problems derived from delays in the administration of justice.[7] The *Child Care Amendment Act* (1996) brings the original norm (from 1983) in accordance with the new Constitution (and the Convention on the Rights of the Child) by recognising indigenous and religious

3 - "The National Program of Action (NPA) is the instrument by which South Africa's Commitments to children are being carried out...identifying all the plans for children developed by government departments, non-governmental organizations (NGOs) and other child related structures..." Africa Preliminary Rapport to the CRC. Para. 3 and 4 Pag. 17.

4 - National Youth Commission Act. President's Office. No.633.19 April 1996 Art.3: *"the object of the Commission shall be: a) to co-ordinate and develop an integrated national youth policy... g) to maintain close liaison with institutions, bodies or authorities similar to the Commission in order to foster common policies and practices and to promote co-operation."*

5 - Legal Aid Amendment Act. No.634. 19 April 1996. Section 3(b) *"Before a court in criminal proceedings directs that a person be provided with legal representation at State expense"*.

6 - Equally stated in Section 254 of the Criminal Procedure Act of 1977.

7 - Criminal Procedure Amendment Act 1996. No. 86 of 1996 Section 342 (a) *"(1) A court before which criminal proceedings are pending shall investigate any delay in the completion of proceedings which appears to the court to be unreasonable and which could cause substantial prejudice to the prosecution, the accused or his or her legal adviser, the State or a witness"*.

marriages, adoption and legal representation of children[8].

9. The *Correctional Services Act* (1993, 1996), constitutes a temporary measure for children awaiting trial : these children must be detained in secure areas.[9] The *Abolition of Corporal Punishment Act* (1997) abrogates all statutory provisions which allowed courts to impose corporal punishments.[10]

10. The ongoing transformation of South African Law may have a negative effect on the legal system, causing confusion and overlapping of rules and laws. Some amendments have been fixed up to once a year,[11] creating new norms but increasing confusion. A particularly striking case may be the Correctional Services Act. Responding to public pressure (mainly from NGOs for the release of children from pre-trial detention), Parliament adopted Act 17 of 1994 in May 1994 in order to counter the extended use of imprisonment for pre-trial detention for children. This legislation led to the release of 829 children from either prisons or police cells; as a result, released children failed to return for trial. Consequently, the IMC (*Inter-ministerial Committee on Young People at Risk*) was set up, and temporary legislation (Act 14 of 1996) was issued, allowing authorities to hold certain young people in pre-trial detention. This was the case for approximately 800 children.[12]

8 - Child Care Amendment Act, No. 96 of 1996, Section 8A *"(1) A child may have legal representation at any stage of a proceeding under this Act"*.

9 - Correctional Services Section 29 © "(5a) In considering whether the interest of the administration of justice and the safety and protection of the public necessitate the detention of a person... in a prison (but not a police cell or lock-up) the presiding officer shall, in addition to any factor which he or she deems necessary, take into account the following factors, namely-(i) the substantial risk of absconding from a place of safety mentioned in Section 28 of the *Child Care Act* of 1983; (ii) the substantial risk of causing harm to other persons awaiting trial in a place of safety..."

10 - Ruling of the Constitutional Court from the case *S vs Williams* (1995). Abolition of the Corporal Punishment Act, 1997 *"Art. 1 Any law which authorizes corporal punishment by a court of law, including a court of traditional leaders, is hereby repealed to the extent that it authorizes such punishment"*.

11 - *Inter alia* the *Correctional Services Act* (1993,1996) and the Criminal Procedure Act (1996,1997) with some interim dispositions subjected to further discussion under the South African Law Commission.

12 - South African Law Commission, Issue Paper 9 Project 106 Juvenile Justice June1997, Para.6.5., ISBN 0-611-27335.

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Definition of the Child

11. As expressed in the State report (Para. 51 and 52), both the Constitution[13] and the *Child Care Act* (1983)[14] define a child as a person under the age of 18 years. However, in common law, from 21 years, the minor achieves majority. National laws do not define children in an uniform way and there is no separate legislation for children in certain areas (State Report, Para. 51).

12. The Department of Correctional Services defines a juvenile as a young person under the age of 21. As a result there are reports of children imprisoned with persons between the ages of 18 and 21.[15] However, the new *Correctional Services Act*, 1998, defines a child as a person under the age of 18 years (Section 1, Chapter I). This legal reform has led the Department of Correctional Services to modify its definition of a child and to stop such a practice of detention.

13. Regarding the legal entitlement to representation in court, children have the right to a legal representative in civil and criminal proceedings (Section 28.2.h) at the State's expense if necessary.[16]

14. It is worth noting a difference between common law and customary ruling as regards the definition of the Child. Whereas in most cases both types of law can be complementary, in other aspects customary law appears discriminatory and in contradiction with the rule of common law.

15. South African women are, under customary law, deemed to be perpetual minors: they depend firstly on parental authority and later on their husband's

13 - Section 28.3 *"child means a person under the age of 18 years"*.

14 - Children Care Act, no 74.1983 Section 1 *"child means a person under the age of 18 years"*.

15 - Community Law Center, Children in Prison in South Africa, A Situational Analysis, (no Date), p. 11.

16 - Section 73.3 of the *Criminal Procedure Act* (1977) "An accused who is under the age of eighteen years may be assisted by his parent or guardian at criminal proceedings, and any accused who, in the opinion of he court, requires the assistance of another person at criminal proceedings, may, with the permission of the court, be so assisted at such proceedings." Moreover, new Regulation 4A of the Regulations under the *Child Care Amendment Act* (1996), states that "a child may have legal representation at any stage of a proceeding under this Act."

authority.[17] The definition of the child in customary law is not clear as it uses criteria based on ceremonial acts such as the initiation rite or marriage rather than the chronological age of the individual. Initiation rites may have contrary effects on the child's best interests by interfering with a child's education. Also, and more importantly, the physical effects of initiation procedures may be harmful or even fatal to a child's health.[18]

16. Legal capacity of the child is granted from birth. Namely they can, at any age, own properties. Nonetheless, limitations are placed on their ability to act independently. Children under seven years old need a representative to act on his or her behalf. In common law, a person between the age of 7 and 21 years is considered a minor (if younger than 7, the person is considered an *infant*).

17. According to the Preliminary Report on South Africa, the age of criminal capacity is, under common law, fixed at 7 years old even if there is the presumption that a child between the age of 7 and 11 lacks criminal capacity (this assumption can be dismissed if it is shown that the child knows the difference between right and wrong).[19] However, according to reports, courts often rebut this presumption and children under the age of 14 are often arrested and convicted of criminal offences.

18. Children cannot address courts by themselves (namely, they are not able to either lodge a complaint or file an appeal). Children must act through their parents or legal guardians when they are facing criminal charges.

17 - J C Bekker "Children and young persons in indigenous law" JA Robinson (ed.) *The Law of Children and Young Persons in South Africa*, p. (1997) 191-192.

18 - Vilakazi-Tselane, Linda *A Situational Analysis of the Girl Child: A research Report for NIPHAR-South Africa* (February 1998) 18, 23-25.

19 - Mothers of children are asked to indicate whether their children understand the difference between right and wrong, an affirmative answer is considered to rebut the presumption of *doli incapax*. South African Law Commission, Issue Paper 9 Project 106 Juvenile Justice, June1997, Para.3.6. ISBN 0-611-27335

Child protection against all forms of discrimination

19. The Constitution provides for everybody's equality before law (Sections 9 and 28).[20] It prohibits the State or any person from discriminating against anyone on any grounds such as sex, race, gender or colour.

20. Legislative measures against discrimination include the *Elimination of All Forms of Racial Discrimination Bill* (which makes the *Convention on the Elimination of All Forms of Racial Discrimination*, ratified by the RSA, part of domestic law) and the *Amendments to the Children's Status Act* (1987), which provides for some anti-discriminatory measures concerning children, in particular on issues related to paternity and sexual intercourse.

21. According to the report (§95), both in law and practice, discrimination against children, particularly against the girl child, is still a current issue. Whereas the minimum age for sexual consent is 19 years old for boys, for girls the minimum age is 16.

22. Minors under 21 (years) require the consent of both parents or of a guardian in order to get married;[21] in fact a child below 21 years will become a major for all legal purposes when they are married.

23. As reported by the Government (§ 95), the cautionary rule*, exercised by the Court on children giving testimony in cases "of offences related to sexual violence", was part of the discriminatory judicial practice. The amendments to the Criminal Procedure Act 51 of 1977 establishes the manner in which a child can give testimony,[22] either through an intermediary or by using signs or dolls to show what happened. The Supreme Court of appeal has rejected some of these cautionary rules.[23] In fact, it has been reported that, in rape cases

20 - Section 9 (2) *"Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons disadvantaged by unfair discrimination may be taken".*

21 - Marriage Act 25 of 1961.

* A rape victim's version should be treated with caution as often she is the only witness.

22 - Section 170 A (inserted by Section 3 of the Criminal Law Amendment Act 135 of 1991).

23 - *Jackson vs. S* (Case no.35/97).

at least, the cautionary rule no longer exists.

24. Currently, children born from customary unions and marriages by religious rites can be registered at birth as legitimate.[24] The capacity of an extra-marital child to inherit from its father has been equally modified.[25]

25. Disparities have been reported in the treatment of children and youth in residential facilities in terms of race and budgetary allocations. Some of the issues raised are standards of care, methods of discipline and extent of freedom. Important differences have also been detected between the urban and rural areas or between wealthier and poorer ones.[26] Allegedly a child accused of theft may be held in prison in one province whilst in another such a child would ordinarily be referred to an alternative institution because welfare institutions do not exist in his or her homeland.[27] Furthermore as most (six out of nine) of the Reform Schools are located in Cape Town, many children are moved from their provinces of origin, making contact with their parents or guardians difficult.

Best interests of the child

26. The Constitution establishes in its Section 28(2)[28] that the child's best interests are of maximum importance in every matter concerning the child. Moreover, in ratifying the Convention, the RSA, committed itself on expanding its importance to all spheres ("First Call for Children").

27. The *Amendments to the Correctional Services Act* (1995), has special provisions aimed at avoiding, as much as possible, child imprisonment. There are also

24 - Amendment to the Births and Registration Act 51 of 1992.

25 - Interstate Succession Act 81 of 1987 and 1992 amendments to the Wills Act 7 of 1953.

26 - *In whose best interest?* IMC Report on Places of Safety, Schools of Industry and Reform Schools (1996).

27 - South African Law Commission, Issue Paper 9 Project 106 Juvenile Justice, June 1997, Parab 6.9, ISBN 0-611-27335.

28 - Section 28.2 "*A child best interests are of paramount importance in every matter concerning the child*".

provisions aimed at providing special measures for detained children. Several projects have been launched in order to adapt the justice system to children by providing special pre-trial services, counselling and legal aid.[29]

28. It has been reported that since 1992 the Department of Justice has systematically removed social workers from present positions dealing with child assistance, replacing them with staff trained in secretarial skills, and allegedly caused an overall lowering of the efficiency of the Children's Court's inquiries and proceedings[30].

29. Theoretically, the protection provided by the *Child Care Act* extends to foreign nationals. However, the *Amendment to the Correctional Services Act* (1995), does not apply to children detained as illegal aliens. They can be detained in prisons for extended periods of time and in some cases they have been denied access to hospitals.

Right to participation

30. The *National Youth Commission Act* (1996) provides for the Creation of a National Youth Commission that may be able to influence policy related to youth in South Africa. This Commission is in charge of developing and monitoring the implementation of a national youth policy (Section 8 (a,i) as well as reviewing the compliance with international conventions related to children (Section (a,xxii)). It has been reported that this Commission, however, rarely demands the children's views about those questions affecting them.

31. The ongoing SA Law Commission's Project on Juvenile Justice is bound to increase the role of the child in the whole juvenile justice process. In a criminal trial the views of a child witness are taken into consideration.

29 - Section 29 Correctional Services Act; Section 73 Criminal Procedure Act; Section 35 Constitution.

30 - J.Sloth Nielsen and B. Van Heerden "Proposed amendments to the child care act and regulations in the context of constitutional and international law developments in South Africa", "South African Journal on Human Rights" p. 250-251. June 1996.

Freedom from torture, inhuman and degrading treatment or punishment (Article 37)

32. The Constitution guarantees, in Section 12.1[31], protection from torture and cruel, inhuman or degrading treatment and punishments. The *Abolition of Corporal Punishment Act* (1997), has followed the Constitutional Court judgements and outlaws juvenile whippings. All statutory provisions allowing Courts to impose this kind of punishment have been repealed.

33. A number of cases have been reported of emotional, physical or sexual abuse of children held in Residential Facilities, either by other inmates or by members of staff. Widespread use of isolation cells, corporal punishment and punishment/reward systems have also been reported in such institutions.[32] Moreover, it has been reported that a number of children serving time in those institutions, industrial schools and reform schools were serving longer sentences than they would if imprisonment were imposed.

34. Even if torture is forbidden by the South African Constitution and, therefore, any evidence obtained from an accused by unlawful means has no validity before a court, there is no reference to the sanctions inflicted upon those accused of ill-treatment or torture. Without necessary legislative complements, the prohibition of torture may remain merely symbolic. Steps should be taken to identify what is meant by torture, degrading treatment or inhumane punishment in the South African legal framework. South African law has not explicitly prohibited it, (for instance, by amending the Criminal Procedure Act or the Correctional Services Act) neither has it established specific criminal sanctions to perpetrators of torture, particularly public officials.

31 RSA Constitution, Act 108 1996 Section 12 *"Everyone has the right to freedom and security of the person, which includes the right- a) not to be deprived of freedom arbitrarily or without just cause; b) not to be detained without trial; c) to be free from all forms of violence from either public or private sources; d)* ***not to be tortured in any way****; e) not to be treated or punished in a cruel, inhuman or degrading way. 2) Everyone has the right to bodily and psychological integrity..."*

32 IMC(Inter-ministerial Committee) Investigation into places of safety, industrial schools and reform schools as quoted in South African Law Commission, Issue Paper 9 Project 106 Juvenile Justice, June1997,Para 9.27. ISBN 0-611-27335.

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Deprivation of liberty

35. Sections 12 and 35 of the Constitution as well as the new *Correctional Services Act* (1998) describe in a very comprehensive way the set of rights and guarantees of arrested persons. Section 28 (g) of the Constitution deals with the specific rights of children and states that children under the age of 18 may be detained only as a last resort and for the shortest appropriate period of time. Once in detention, they should be held separately from adults. The *Correctional Services Amendment Act* (1996) states that no convicted child may be detained in a prison, police cell or lock-up. Nonetheless, subsequent amendments allow detention of children between the ages of 14 and 18 who have committed serious offences.[33]

36. It seems that up to 50% of imprisoned children were originally accused of crimes which are not part of such a listing, but deemed to be *"offences committed in circumstances so serious as to warrant detention"*[34] (including shop-lifting and theft of minor items). In an analysis recently published, it was stated that as of 31 January 1999, among children awaiting trial, 45.2% are charged with economic offences whereas 37.5% are charged with aggressive offences.[35] In a comprehensive study based on official statistics, it appears that 48% of children are sentenced for economic crimes whereas 32% of children are sentenced for aggressive crimes.[36]

37. According to reports, the number of children awaiting trial in prisons has increased since 1990. From September 1996

33 Murder, rape, robbery where the wielding of a firearm or any other dangerous weapon or the infliction of grievous bodily harm or the robbery of a motor vehicle is involved, assault with intent to do grievous bodily harm, assault of a sexual nature, kidnapping or drug trafficking.

34 According to statistics provided by the Department of Correctional Services. In March 1997 there were789 children awaiting trial in South African prisons, out of this number 467 were charged with offenses not listed in the Correctional Services Act (called Schedule 1 and 2) as quoted in South African Law Commission, Issue Paper 9 Project 106 Juvenile Justice, June1997, Para6.13, ISBN 0 611-27335.

35 Muntingh, Lukas, *Statistics: Children Awaiting Trial in Prison*, in Article 40, Vol 1., May 1999, Children's Rights Project, Community Law Centre, University of the Wester Cape.

36 Community Law Center, Children in Prison in South Africa, A Situational Analysis, (no date), p. 3.

to January 1999, the increase was 152%. According to the above-mentioned analysis, the growing number of children awaiting trial in prisons is more than likely the result of several factors,[37] including:

- lack of enough secure care facilities
- congestion in the criminal justice system
- alternatives to custody are not always taken into account
- public defenders allegedly request unnecessary postponements.

38. As previously mentioned, according to a study, the age issue in the South African legislation has led (as a general rule) to children imprisoned together with persons between the ages of 18 and 21, even in facilities available exclusively for children, such as Rustemburg and Ekuseni children facilities.

39. Furthermore, in the same study it is stated that several persons falsely claim to be under 18 years of age so as to obtain free bail from the courts or to secure lighter sentences.[38] This has had negative consequences: for instance, at the Youth Centre at St. Albans, where some adults passing as juveniles under 18 years of age intimidate the other children.

40. The overcrowding of prisons is another matter for concern. As a result of this problem, serious offenders are sometimes held together with minor offenders in centres such as the Pollsmoor Admission Centre. Most abuse and assaults on children have occurred in this context.

41. In prisons such as Leeuwkop, Pretoria Central, Rustenburg, and Odi Prison, children under the age of 18 are frequently held in detention with juveniles over that age. In other prisons such as Pollsmoor Medium A, St Albans Prison, although children are separate from adults, they are kept in the same house. In addition, in the women's prison of Johannesburg, girl children are kept with older women, even adults, and in the female section at Leeuwkop, girl-children are held with female adults.[39]

42. In the same study, persons who visited the prisons found that records containing information on detained children* was not up-dated frequently or was inaccurate.

37 - Muntingh, Lukas, Ob. Cit.

38 - Community Law Center, Ob. Cit., p. 12.

39 - *Ibidem*, p 12 and 13.

* as mandated by rule 21 of the United Nations Rules for the Protection of Juveniles deprived of their liberty.

43. South African legislation does not prohibit life imprisonment for children,[40] which is contrary to Article 37 (b)[41] of the Convention.

44. Reportedly, some of the children are held in police cells. Most of the children do not receive frequent family visits, mainly because they are too far away from their families.

45. It is worth noting that Section 7, 2 (e) of the new *Correctional Services Act* (1998) establishes that prisoners who are children must be kept separate from adult prisoners and in accommodation appropriate to their age.

46. The *Correctional Services Act* (1998) establishes in section 25 the possibility of solitary confinement as penalty in case of disciplinary infringements. OMCT is of the opinion that solitary confinement applied to children can constitute a violation of their right to integrity. Therefore, OMCT suggests that the Committee ask the authorities of South Africa to specify whether this punishment is applicable to children and, if so, to amend the section accordingly.

Sexual exploitation and abuse

47. Although the Constitution explicitly states that all children have the right to be protected from maltreatment, abuse, neglect and degradation (Section 28.d) and the *Child Care Act* (1983) clearly outlaws it, there is not yet a clear statutory definition of child abuse or neglect.

48. Some specific aspects and forms are covered by the *Sexual Offences Act* (1957), which also provides for an age of consent (19 for boys and 16 for girls, as mentioned above). The *Child Care Amendment Act* (1999), defines commercial sexual exploitation. However, any person who is convicted of an offence of commercial

40 - Four children are reported to be serving sentences of life imprisonment in the country.

41 - Art. 37: *"(a) Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age (b)...the arrest, detention or imprisonment of a child... shall be used only as a measure of last resort and of the shortest appropriate period of time".*

sexual exploitation shall be liable for a fine or imprisonment for a period not exceeding 10 years, or both such a fine and such an imprisonment.

49. Regarding this issue, OMCT is of the opinion that the possibility of imposing only a fine on perpetrators of this kind of offence would be a light punishment.

50. Child Commissioners are in charge of the inquiry process. It would be appropriate to ask the Government whether those officials are specifically trained to deal with children or family problems.

51. After the inquiry, which may take between eight and sixteen weeks, children may be removed and placed in care institutions (foster care included). This placement of children in institutions is highly controversal after independent research reported that places of safety, industrial schools and reform schools were carrying out punitive disciplinary regimes with widespread use of isolation cells and claims by children of physical and sexual abuse.

52. The *Prevention of Family Violence Act* (1993) established protection measures in child abuse cases such as granting prohibition of assaults or threats that, once disobeyed, will be used as a cause for detention. However, it has been reported that the Act is rarely implemented as police officers remain reluctant to apply it and bureaucratic delays persist.

Child Labour

53. The Constitution establishes that *exploitative labour practices* are contrary to the child's well being. An estimated number of 200,000 children between the ages of 10 and 14 years are engaged in work.[42] The *Basic Conditions of Employment Act* (1983) prohibits the employment of children under the age of 15. Unfortunately this Act does not make any provision for enforcing this prohibition.

54. Reportedly, a new Basic *Conditions of Employment Bill* will be passed, with a

42 South African Household Survey (1994).

special chapter on child enforced labour. This Bill will enable the Minister of Labour to make regulations either prohibiting or placing conditions on the employment of children between the ages of 15 and 18. However this new bill states that the ban on child labour will not apply to : work on the household, business or farming of a parent or legal guardian, among other activities. It is to be noticed that sometimes, work on a farm implies hazardous situations and dangers such as exposure to pesticides or the use of heavy machinery.

Refugees and asylum seeker children

55. South Africa acceded to the Convention on the Status of Refugees in 1996. In 1997, it signed the Protocol relating to the Status of Refugees (1967) and the Convention Governing Specific Aspects of Refugee Problems in Africa (1969) of the Organisation of African Unity.

56. The status of the minor is determined by their parents. The case of unaccompanied minors is considered upon age and maturity, with no details about how this maturity is determined.

57. There are 1951 asylum seeker children in South Africa, who are governed by the *Alien Control Act* (1991) and the *Alien Control Amendment Act* (1995). Both refugee children and children of illegal immigrants are subject to severe regulations.

Children in conflict with the law

58. Within the South African legal framework there is no cohesive juvenile system. Norms regarding children in conflict with the law appear to be present in several Acts, including the *Criminal Procedure Act 51* (1977), the *Probation Services Act 116* (1991), the *Child Care Act 74* (1983), the *Correctional Services Act 8* (1959) and the new *Correctional*

Services Act (1998). These acts are undergoing an amendment process in order to fulfill international standards (chiefly the *Convention on the Rights of the Child* and the Beijing Rules for the Administration of Juvenile Justice)[43] and to be adapted to the new constitutional context. In addition, new norms have been passed before parliament affecting children taken before court.[44]

59. The Constitution ensures due process and fair trial rights (Section 35).[45] Evidences obtained in a manner that violates the rights stated in the *Bill of Rights* are excluded from admission before a Court (Section 35.5).[46] All accused persons, including children, must be informed of the charges brought against them and are entitled to legal representation, in the case of a child by parent or guardian.[47] The *Legal Aid Amendment Act* (1996) provides for legal aid and also for legal representation at State expense.

60. Children's Courts were created by the *Child Care Act* (1983).[48] This Act established special courts dealing with children in conflict with the law. It does not form part of the criminal process (even if overlaps within the criminal justice system occur).

61. Not all children's cases are taken from common Criminal Courts to these special courts. Children's cases are transferred from criminal courts to children courts in only three cases:

- The prosecutor may decide that a matter should be heard in the children's

43 *Criminal Procedure Amendment Act* (1996), *Criminal Procedure Second Amendment Act* (1996), *Child Care Amendment Act* (1996), *Correctional Services Amendment Act* (1996) and *Correctional Services Act no.111* (1998).

44 *Legal Aid Amendment Act* (1996) and *Abolition of Corporal Punishment Act* (1997).

45 It should be noted that many of these guarantees, such as to be promptly informed of the reason for detention (Section 35.2.a) or for the conditions of detention to be consistent with human dignity (8.35.2e), are deemed manageable in case of an emergency situation. Finally, all rights linked to a fair trial are protected under any circumstance (exception made for the reasonable delay with which the trial may be concluded).

46 Constitution 108 RSA, 1996 Section 35.5 (2): *"Everyone who is detained, including every sentenced prisoner, has the right:...b) to choose, and to consult with a legal practitioner and to be promptly informed of this right; c) to have a legal practitioner assigned to the detained person by the state and state expense, if substantial injustice would otherwise result, and to be immediately informed of these rights".*

47 *Criminal Procedure Act* (1977), Section 73 "(1) *An accused who is arrested, whether with or without a warrant, shall, subject to any law relating to the management of prisons, be entitled to the assistance of his legal adviser from the time of his arrest...(3) An accused who is under the age of eighteen years may be assisted by his parent or guardian at criminal proceedings...*"

48 Child Care Act, Act No.74 1983 Section 5: "*(1) Every magistrate's court shall be a children's court for the area of its jurisdiction (2) Every Commissioner's court is a children's court for the area for which it has been established...*"

court, referring it by withdrawing the charges against the accused in the criminal court and instructing such a transfer[49];

- The absence of either a parent or a guardian, in which case the magistrate may order the child to be taken to a place of safety and brought before a children's court as soon as possible.[50]

- The last reason to remove a case from a Criminal Court to a Children's Court is the perception by the Magistrate that the accused child is in need of care.[51] The trial may then be stopped and the accused brought before a children's court. The children's court proceedings take the form of an inquiry, not of a trial, and neither a conviction nor a sentence is given. Once the inquiry proceedings are completed, the court is empowered to order the placement of the child in a children's foster home or in a school of industries.

62. The Child's Court inquiries constitute an interesting procedure which in fact prevents young offenders from having a registered criminal record. This appears to be in compliance with Article 40 (b)[52] of the *Convention on the Rights of the Child* and Rule 11.1[53] of the *Beijing Rules* on juvenile justice.

63. Unfortunately in 1997 only 5% of cases were referred from Criminal Courts to Children's Court Inquiries.[54] Moreover, some of the advantages of the system are

49 - The grounds upon which prosecutors tend to base the decisions of withdrawing the charges are: that the motive for the crime is of a less serious nature, because the prosecutor knows the child from previous appearances or that the accused is too young to deserve criminal conviction.

50 - Child Care Act, Act No. 74 1983 Section 12 *"(1) If it appears to any court in the course of any proceeding before that court that any child has no parent or guardian or that it is in the interest of the safety and welfare of any child that he be taken to a place of safety, that court may order that the child be taken to a place for safety and be brought thereafter as soon possible before a children's court"*.

51 - Criminal Procedure Act, Act. No. 51 1983 Section 254: *"(1) If it appears to the court at the trial upon any charge of any accused under the age of eighteen years, that he is a child in need of care as defined in section 1 of the Children's Act...the trial may be stopped, and an order issued that the accused be brought before a children's court"*.

52 - CRC Article 40 (b): *"whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings"*.

53 - Rule 11.1: *"Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority..."*

54 - FN Zaal and CR Matthias *Journey to nowhere: Moving children from juvenile courts to children's courts* in South African Juvenile Justice: Law Practice and Policy, quoted in South African Law Commission, Issue Paper 9 Project 106 Juvenile Justice June 1997. Para 8.9. ISBN 0-611-27335.

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only realised in a few major urban districts where full-time children's courts do exist.[55]

64. According to information, the institution of the *child commissioner*, the magistrate deemed to chair a children's court[56] is at stake due to under-funding and a lack of specialised skills (in connection with social work methodologies) among potential commissioners.[57]

65. The *Criminal Procedure Act* (1997) provides alternative ways of dealing with convicted young people under the age of 18, using correctional supervision, custody by a suitable person or reform school [58]. An investigation requested by the Cabinet in 1996 revealed serious human rights abuses in Reform Schools (which are dependent on the Department of Education). Places of Care and Children's Homes controlled by the State are also the object of harsh criticism as it has been revealed in an alarming number of cases that ill treatment and abuse occur. The inspections of these establishments has been proposed in the reforming process of the *Child Care Act* (1983). Unfortunately the suggested system of inspection would be completely arbitrary: the right of the child to be heard would be left to the investigator's discretion and the Director General, who would receive the results, would not have any mandate to take action.

66. The *Criminal Procedure Act* establishes a different kind of sentence which may be imposed upon children, such as : acquitted on bail and reprimand;[59] postponement of sentence, unconditionally or with one or more conditions; placement under the supervision of a probation officer or correctional official[60]; placement in the custody of any suitable person designated by

55 - FN Zaal Do children need lawyers in the Children's Courts? Publication of the Children's Rights Project, Community Law Centre, University of the Western Cape as quoted in South African Law Commission Issue Paper 13 Project 110, The Review of the Child Care Act, April 1998, ISBN 0-621-28026-7, Para 7.2.1.

56 - Child Care Act 1983 Section 7(1) "*A commissioner or assistant commissioner of child welfare shall preside over a children's court....*"

57 - South Afrian Law Commission Issue Paper 13 Project 110, The Review of the Child Care Act, April 1998, ISBN 0-621-28026-7 Para 7.2.2.

58 - Only children 14 and older are sent to this kind of institution, although there is no stated minimum age requirement.

59 - Section 297 *Criminal Procedure Act* (1977).

60 - Section 290 *Criminal Procedure Act* (1977) as amended.

the court;[61] a fine;[62] correctional supervision;[63] placement in a reformatory school;[64] and imprisonment including periodical imprisonment. The South African legal framework forsees options (in the *Criminal Procedure Act*) for suspension or postponement of sentences.[65]

67. The current engagement of the SA Law Commission Project Committee on Juvenile Justice is examining some issues to be improved or modified in the near future. Among the discussed items are the inclusion of international principles in domestic legislation and the question of age and criminal capacity. Another matter of concern is finding ways to ensure that young people are legally represented in court (reportedly less than 10% of child offenders are legally represented).[66] Alternatives to bail and questions relating to models for juvenile courts are to be developed as well.

61 - Section 290 (1)(b) "*Any Court in which a person under the age of eighteen years is convicted of any offence may, instead of imposing punishment upon him for that offence, a) Order that he be placed under the supervision of a probation officer b) Order that he be placed in the custody of any suitable person designated in the order c) deal with him both in terms of paragraphs (a) and (b) or d) order that he be sent to a reform school...*"

62 - Section 297 *Criminal Procedure Act* (1977) "*Where a court convicts a person of any offence, other than an offence in respect of which any law prescribes a minimum punishment the court may in its discretion... impose a fine*".

63 - Section 276 *Criminal Procedure Act*.

64 - Section 290 *Criminal Procedure Act* (1977).5 - They are summarized in Section 297 of the Criminal Procedure Act, being the following ones: Compensation, rendering to the persona aggrieved of some specific benefit or service as compensations for damage, performance without remuneration and outside the prison of some service for the benefit of the community under the supervison or control of an organisation or institution, submission to instruction or treatment, submission to the supervision or control of a probation officer, compulsory attendance or residence at some specified centre, good conduct and other matters.

66 - Article 40.2.a iii of the Convention ensures that the child will have "*...the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance...*"

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Conclusions and recommendations

The Government of South Africa has adopted several measures and introduced a number of amendments to fit domestic legislation to the Convention on the Rights of the Child. Efforts have been undertaken to transform an old legal inherited system and face an equally inherited conflictive situation. However, it seems to OMCT that there are still many gaps and contradictions at the legislative level and several problems have arisen from the economic and social conditions of the country.

OMCT would suggest that Committee recommend that the authorities of South Africa:

- make national laws regarding the definition of children uniform.

- take into account that South African women are, under customary law, deemed to be perpetual minors. OMCT suggests that Committee request the authorities of South Africa to launch a national program aimed at putting an end to these practices, which are contrary to human rights standards regarding the status of women;

- take appropriate measures to abolish discrimination against the girl child;

- suggest that the Department of Justice not remove social workers from present positions dealing with children;

- raise by statute the age of criminal responsibility to at least 14 years of age;

- at the same time, to reboot also by statute, the possibility of dismissing the presumption that a child between the age of 7 and 14 lacks criminal capacity. If children under the age of 14 are currently arrested and convicted of criminal offences and are serving sentences of imprisonment in South African prisons, they should be either released or sent to education facilities;

- establish by statute that children can personally address Courts and are able to either lodge a complaint or file an appeal;

- establish by statute that children can give evidence during a children's court hearing;

- there is no reference to the sanctions inflicted upon those accused of ill-treating or torturing. Without necessary legislative measures, the prohibition of torture may remain merely symbolic. Steps should be taken to identify what is meant by torture, degrading treatment or inhumane punishment in the South African legal framework South African law shall both explicitly prohibit torture (by, for instance, amending the *Criminal Procedure Act or the Correctional Services Act)* and establish criminal sanctions with regards to perpetrators of torture, particularly public officials.

- separate imprisoned children from detained persons between the ages of 18 and 21;

- adopt immediate and appropriate measures to use imprisonment only as a measure of last resort and to avoid it in cases of light offences such as economic ones;

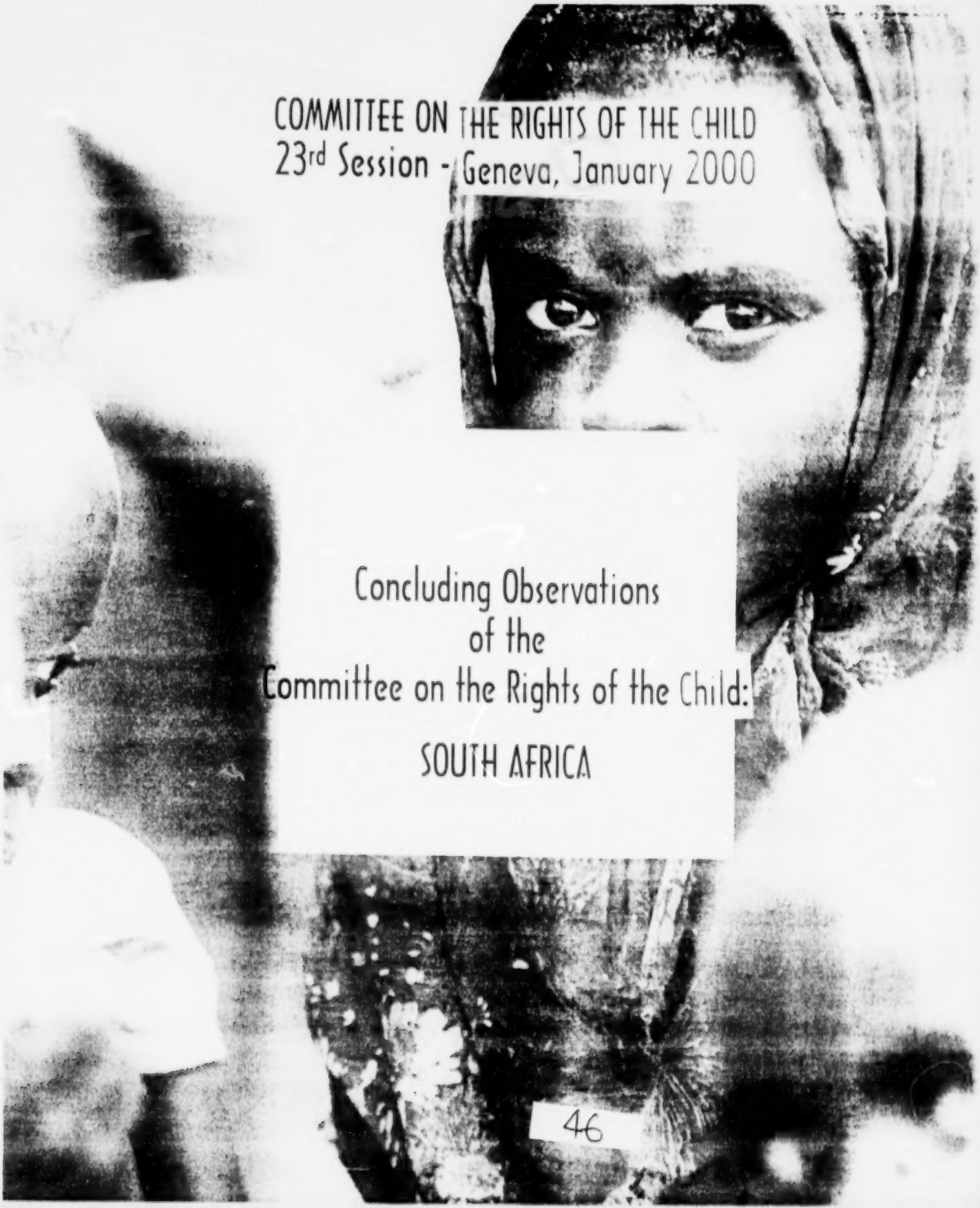
- adopt urgent and adequate measures to ameliorate the situation of overcrowding of prisons;

- ensure, by adopting the necessary legislative measures, that children do not receive life imprisonment sentences;

- adopt a clear statutory definition of child abuse and child neglect;

- adopt the necessary measures to implement the *Prevention of Family Violence Act* (1993);

- specify whether solitary confinement as a punishment is applicable to children and if not, to amend the *Correctional Services Act* (1998) to proscribe it.



COMMITTEE ON THE RIGHTS OF THE CHILD
23rd Session - Geneva, January 2000

Concluding Observations of the Committee on the Rights of the Child:

SOUTH AFRICA

46

Consideration of Reports Submitted by States Parties Under Article 44 of the Convention

CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE RIGHTS OF THE CHILD: SOUTH AFRICA

1. At its 609th, 610th and 611th meetings (see CRC/C/SR.609, 610 and 611), held on 25 and 26 January 2000, the Committee on the Rights of the Child considered the initial report of South Africa (CRC/C/51/Add.2), which was submitted on 4 December 1997, and adopted the following concluding observations, at the 615th meeting, held on 28 January 2000.

A. Introduction

2. The Committee welcomes the submission of the State party's initial report which followed the established guidelines and provided a critical assessment of the situation of children. The Committee also welcomes the efforts of the State party to ensure that its initial report was submitted on time. The Committee takes note of the written replies to its list of issues (CRC/C/Q/SAFR.1). The Committee is encouraged by the constructive, open and frank dialogue it had with the State party and welcomes the positive reactions to the suggestions and recommendations made during the discussion. The Committee acknowledges that the presence of a high-ranking delegation directly involved in the implementation of the Convention allowed for a fuller assessment of the situation of the rights of children in the State party.

B. Positive aspects

3. The Committee expresses appreciation for the efforts made by the State party in the area of legal reform. In this regard, the Committee welcomes the new Constitution (1996), in particular article 28, which guarantees children a number of specific rights and freedoms also provided for under the Convention. Further, the Committee notes with appreciation the additional legislation enacted to bring about

greater harmonization between domestic legislation and the Convention, including: the National Youth Amendment Act (1996); the Legal Aid Amendment Act (1996); the Criminal Procedure Amendment Act (1996); the Film and Publications Act (1996); the National Education Policy Act (1996); the Child Care Amendment Act (1996); the Abolition of Corporal Punishment Act (1997); the Divorce Courts Amendment Act (1997); the Establishment of Family Court Act (1997); the Maintenance Amendment Act (1997); the Natural Fathers of Children Born out of Wedlock Act (1997); and the Criminal Procedure Second Amendment Act (1997).

4. The Committee welcomes the implementation of a National Programme of Action (NPA) within the State party. In this regard, it welcomes the establishment of the National Programme of Action Steering Committee (NPASC) which is responsible for the identification of plans, the coordination and evaluation of programmes, and the periodic submission of progress reports to Cabinet on the implementation of the NPA as well as compliance obligations under the Convention. The Committee notes that the membership of the NPASC comprises representatives from various ministries and agencies involved in the promotion of the rights of children as well as representatives of civil society, including NGOs and the National Children's Rights Committee (NCRC) and UNICEF South Africa.

5. The Committee welcomes the establishment of the South African Human Rights Commission and the appointment of a director with responsibility for children's rights.

6. The Committee also welcomes the implementation of the "Human Rights Institutional Strengthening Project" with the support of the Office of the High Commissioner for Human Rights (OHCHR). The Committee notes that the project includes provision of advisory services to finalize the human rights training package developed by the South African Police Service (SAPS); publication of a pocket guide for police on human rights standards and practice; advice and assistance to the South African Human Rights Commission (SAHRC); advice and assistance to the Justice College of the Ministry of Justice in integrating human rights in the training curriculum for magistrates,

prosecutors and other officials concerned with the administration of justice; and support to Fort Hare University in developing a series of human rights training workshops and establishing a documentation centre.

7. The Committee welcomes the State party's efforts in establishing a Children's Budget Project launched with the aim of developing an overall perspective on the Government's expenditure with respect to children's programmes and examining the impact of this expenditure on the lives of children.

8. The Committee appreciates the State party's initiatives within the school environment. In this regard, it welcomes the enactment of the South African Schools Act (1996) which has led to enhanced participatory rights for children within the educational system; the right of children to choose their own language of learning (multilingualism); and the abolition of corporal punishment in schools. The Committee also notes with appreciation the establishment of an integrated National Primary School Nutrition Programme intended to encourage enrolment and facilitate attendance of all children, especially those from economically disadvantaged families. The Committee also notes that under "Curriculum 2005", additional initiatives are envisaged within the school environment, including programmes to encourage non-discrimination and facilitate inclusion, especially of children with disabilities and those with HIV/AIDS. "Curriculum 2005" also aims to address the inequalities within the educational system established during apartheid.

C. Factors and difficulties impeding the implementation of the Convention

9. The Committee acknowledges the challenges faced by the State party in overcoming the legacy of apartheid which continues to have a negative impact on the situation of children and to impede the full implementation of the Convention. In particular, the Committee notes the vast economic and social disparities that continue to exist between various segments of society as well as the relatively high levels of unemployment and poverty which adversely affect the full implementation of the Convention and remain challenges for the State party.

D. Subjects of concern and recommendations of the Committee

1. General measures of implementation

Legislation

10. The Committee notes the efforts of the State party to bring about legal reform and to introduce measures to ensure greater conformity between domestic legislation and the Convention. The Committee also notes that the South African Law Commission is currently reviewing legislation as well as customary law with a view to introducing additional legal reform concerning, *inter alia*, the prevention of family violence, HIV/AIDS policies in school, the establishment of a new juvenile justice system, the expansion of the child-care system and the protection of sexually abused children. However, the Committee remains concerned that the law, and in particular customary law, still does not fully reflect the principles and provisions of the Convention. **The Committee encourages the State party to continue its efforts in the area of legal reform and to ensure that its domestic legislation conforms fully with the principles and provisions of the Convention.**

Ratification of international human rights instruments

11. The Committee notes that the State party has not yet ratified the International Covenant on Economic, Social and Cultural Rights. The Committee is of the opinion that the ratification of this international human rights instrument would strengthen the efforts of the State party to meet its obligations in guaranteeing the rights of all children under its jurisdiction. **The Committee encourages the State party to reinforce its efforts to finalize the ratification of this instrument.**

Coordination

12. While the Committee notes the establishment of the National Programme of Action Steering Committee (NPASC) to coordinate the implementation of programmes relevant to the protection and care of children, it is concerned that insufficient effort has been made to ensure that adequate programmes are introduced at the community level. In this context, the Committee further expresses concern at the insufficient efforts made to involve community-based organizations in the promotion and implementation of the Convention. The Committee is also concerned about the lack of coordination

between those ministries responsible for the implementation of the Convention. **The Committee recommends that the State party take effective measures to ensure that the programmes and activities of the NPASC are established in rural areas as well as at the community level. The State party is encouraged to take all effective measures to promote capacity-building among community-based organizations and to further facilitate their inclusion in the coordination, promotion and implementation of the Convention. The Committee recommends that the State party strengthen its efforts to ensure greater coordination between those ministries and departments responsible for the implementation of the Convention.**

Independent monitoring mechanism

13. The Committee welcomes with appreciation the State party's establishment of the South African Human Rights Commission which is mandated to promote the observance of fundamental human rights at all levels of society. The Committee notes that the Commission also has powers to conduct investigations, issue subpoenas and hear testimony under oath. The Committee is concerned, however, that insufficient resources have been allocated to allow the Commission to carry out its mandate effectively. Additionally, the Committee notes with concern that the work of the Commission continues to be hampered by, *inter alia*, red tape and the need for additional legislative reform. The Committee is also concerned at the absence of a clear procedure to register and address complaints from children concerning violations of their rights under the Convention. **The Committee encourages the State party to take effective measures to ensure that adequate resources (both human and financial) are allocated to ensure the effective functioning of the South African Human Rights Commission. The Committee recommends that the State party establish clear child-friendly procedures to register and address complaints from children regarding violations of their rights and to guarantee adequate remedies for such violations. The Committee further suggests that the State party introduce an awareness-raising campaign to facilitate the effective use by children of such a procedure.**

Data collection

14. The Committee is concerned that the

current data collection mechanism is insufficient to afford the systematic and comprehensive collection of disaggregated quantitative and qualitative data for all areas covered by the Convention in relation to all groups of children in order to monitor and evaluate progress achieved and assess the impact of policies adopted with respect to children. **The Committee recommends that the system of data collection be reviewed with a view to incorporating all the areas covered by the Convention. Such a system should cover all children up to the age of 18 years, with specific emphasis on those who are particularly vulnerable, including girls; children with disabilities; child labourers; children living in remote rural areas, including Eastern Cape, Kwa Zulu-Natal and the Northern region, as well as other disadvantaged Black communities; children belonging to the Khoi-Khoi and San communities; children working and/or living on the streets; children living in institutions; children of economically disadvantaged families; and refugee children. Technical assistance in this area from,** *inter alia*, **UNICEF is encouraged.**

Budgetary allocations

15. The Committee welcomes the initiative of the State party to introduce the practice of "costing" new legislation to ensure its sustainability in terms of, *inter alia*, financing. The Committee notes that the State party is currently "costing" the draft juvenile justice bill to determine its financial sustainability. The Committee notes the challenges faced by the State party in addressing the social and economic legacy of apartheid, particularly among previously disadvantaged communities. The Committee also notes the efforts of the State party in establishing a Children's Budget Project to monitor government expenditure with respect to children's programmes with a view to improving the impact of expenditure on the lives of children. In light of article 4 of the Convention, the Committee remains concerned about the insufficient efforts made to ensure the adequate distribution of resources allocated for children's programmes and activities. **In light of articles 2, 3 and 6 of the Convention, the Committee encourages the State party to pay particular attention to the full implementation of article 4 of the Convention by prioritizing budgetary allocations and distributions to ensure implementation of the economic,**

social and cultural rights of children, to the maximum extent of available resources and, where needed, within the framework of international cooperation.

Dissemination and awareness raising

16. While recognizing the efforts of the State party to promote awareness of the principles and provisions of the Convention, the Committee remains concerned that professional groups, children, parents, and the public at large are generally not sufficiently aware of the Convention and the rights-based approach enshrined therein. **The Committee recommends that greater effort be made to ensure that the provisions of the Convention are widely known and understood by adults and children alike, in both rural and urban areas. In this regard, it encourages the State party to reinforce its efforts to make the Convention available in local languages and to promote and disseminate its principles and provisions through the use of,** *inter alia*, **traditional methods of communication. The Committee further recommends the reinforcement of adequate and systematic training and/or sensitization of traditional community leaders as well as professional groups working with and for children, such as health personnel, including psychologists, social workers, officials of central or local administration, and personnel of child-care institutions. In this regard, the Committee suggests that the State party seek technical assistance from,** *inter alia*, **the Office of the High Commissioner for Human Rights and UNICEF.**

2. Definition of the child

Criminal responsibility and sexual consent

17. While the Committee notes that the State party has drafted legislation to increase the legal minimum age for criminal responsibility from 7 to 10 years, it remains concerned that a legal minimum age of 10 years is still a relatively low age for criminal responsibility. The Committee is also concerned that the legal minimum ages for the sexual consent of both boys (14) and girls (12) are low and that legislation concerning this issue is discriminatory against girls. **The Committee recommends that the State party reassess its draft legislation on criminal responsibility with a view to increasing the proposed legal**

minimum age (10 years) in this regard. The Committee also recommends that the State party increase the legal minimum ages for sexual consent for both boys and girls and ensure non-discrimination against girls in this regard.

3. General principles

Non-discrimination

18. While the Committee notes that the principle of non-discrimination (article 2) is reflected in the new Constitution as well as in domestic legislation, it is still concerned that insufficient measures have been adopted to ensure that all children are guaranteed access to education, health and other social services. Of particular concern are certain vulnerable groups of children, including Black children; girls; children with disabilities, especially those with learning disabilities; child labourers; children living in rural areas; children working and/or living on the streets; children in the juvenile justice system; and refugee children. **The Committee recommends that the State party increase its efforts to ensure implementation of the principle of non-discrimination and full compliance with article 2 of the Convention, particularly as it relates to the vulnerable groups.**

Respect for the views of the child

19. While the Committee recognizes the efforts of the State party in promoting respect for the views of the child and encouraging child participation, it is concerned that traditional practices and attitudes still limit the full implementation of article 12 of the Convention, particularly in the provinces and at the local level. **The Committee encourages the State party to continue promoting public awareness of the participatory rights of children and encouraging respect for the views of the child within schools, families, social institutions, and the care and judicial systems. The Committee recommends that the State party train teachers to enable students to express their views, particularly in the provinces and at the local level.**

4. Civil rights and freedoms

Birth registration

20. The Committee notes that the Births and Deaths Act provides for the registration of all children at birth and that recent initiatives have been undertaken to improve and facilitate the process of birth registra-

tion, particularly in rural areas. However, the Committee is concerned that many children are still not registered. **In light of articles 7 and 8 of the Convention, the Committee encourages the State party to continue its efforts through, *inter alia*, mobile clinics and hospitals, to ensure that birth registration is made accessible to all parents within the State party. The Committee also recommends that efforts be made to raise awareness among government officers, community leaders and parents to ensure that all children are registered at birth.**

Torture, or other cruel, inhuman or degrading treatment or punishment

21. While recognizing the efforts of the State party to train the police on the treatment of detainees and the non-use of unnecessary force, the Committee is concerned about the high incidence of police brutality and the inadequate enforcement of existing legislation to ensure that children are treated with respect for their physical and mental integrity and their inherent dignity. **The Committee recommends that all appropriate measures be taken to fully implement the provisions of articles 37 (a) and 39 of the Convention. In this regard, the Committee further recommends that greater efforts be made to prevent police brutality and ensure that child victims are provided adequate treatment to facilitate their physical and psychological recovery and social reintegration and that perpetrators are sanctioned.**

5. Family environment and alternative care

Parental guidance

22. The Committee notes with concern the increasing number of single-parent and child-headed families and the impact (both financial and psychological) on children. The insufficient support and counsel in the areas of parental guidance and responsibilities are also matters of concern. **The State party is encouraged to increase its efforts in developing family education and awareness through, *inter alia*, providing support, including training for parents, especially single parents, in parental guidance and joint parental responsibilities, in light of article 18 of the Convention. The Committee recommends that the State party take all necessary measures to reduce and prevent the increasing number of child-headed households and to introduce**

adequate support mechanisms for existing child-headed families. The Committee further recommends that the State party undertake a study on the situation of single parent, polygamous and child-headed families with a view to assessing the impact on children.

Maintenance

23. While the Committee notes that legislation has been enacted to provide for the recovery of maintenance for the child, it is concerned that insufficient measures have been taken to ensure the enforcement of maintenance orders. **In light of article 27 of the Convention, the Committee recommends that the State party take effective measures to ensure compliance with maintenance orders and the recovery of maintenance for the child.**

Welfare services

24. The Committee notes the recent initiative of the State party to institute a Child Support Grant which aims to provide greater financial support to children from the most economically disadvantaged families. The Committee remains concerned about the phasing-out of the Maintenance Grants and the potential impact for economically disadvantaged women and children who currently benefit from the programme. **The Committee recommends that the State party expand its Child Support Grant programme or develop alternative programmes to include support to children up to the age of 18 years, who are still in school. The Committee encourages the State party to take effective measures to ensure the continuation of support programmes for economically disadvantaged families.**

Alternative care

25. With respect to the situation of children deprived of a family environment, the Committee expresses its concern about the insufficient number of alternative care facilities in previously disadvantaged communities. Concern is also expressed about the insufficient monitoring of placements and the limited number of qualified personnel in this field. The Committee further notes with concern the inadequate monitoring and evaluation of placements in the foster care programme. **The Committee recommends that the State party develop additional programmes to facilitate alternative care, provide additional training for social and welfare workers and establish independent complaint and monitoring mechanisms for**

alternative care institutions. It is also recommended that the State party increase its efforts in providing support, including training for parents, to discourage the abandonment of children. The Committee further recommends that the State party ensure adequate periodic review of placements in the foster care programme.

Domestic and intercountry adoptions

26. While the Committee notes that the Child Care Act (1996) provides for the regulation of adoptions, it is concerned at the lack of monitoring with respect to both domestic and intercountry adoptions as well as the widespread practice of informal adoptions within the State party. The Committee is also concerned at the inadequate legislation, policies and institutions to regulate intercountry adoptions. **In light of article 21 of the Convention, the Committee recommends that the State party establish proper monitoring procedures with respect to both domestic and intercountry adoptions and introduce adequate measures to prevent the abuse of the practice of traditional informal adoptions. Additionally, it is recommended that the State party take all necessary measures, including legal and administrative ones, to ensure the effective regulation of intercountry adoptions. The Committee further encourages the State party to reinforce its efforts to finalize its ratification of the Hague Convention of 1993 on the Protection of Children and Cooperation in Respect of Intercountry Adoption.**

Domestic violence, ill-treatment and abuse

27. The Committee notes the enactment of the Child Care Act and the Prevention of Family Violence Act to provide greater protection for children. The Committee also notes the recent introduction of the National Crime Prevention Strategy which focuses on crimes against women and children as well as the Victim Empowerment Programme which promotes the empowerment of victims of abuse, especially women and children. However, the Committee remains gravely concerned about the high incidence of domestic violence, ill-treatment and abuse of children, including sexual abuse within the family. **In light of article 19, the Committee recommends that the State party undertake studies on domestic violence, ill-treatment and abuse to understand the**

scope and nature of these practices. The Committee also recommends that the State party reinforce its efforts to formalize a comprehensive strategy to prevent and combat domestic violence, ill-treatment and abuse and further adopt adequate measures and policies to contribute to changing attitudes. The Committee also recommends that cases of domestic violence and ill-treatment and abuse of children, including sexual abuse within the family, be properly investigated within a child-friendly judicial procedure and sanctions applied to perpetrators, with due regard given to protecting the right to privacy of the child. Measures should also be taken to ensure the provision of support services to children in legal proceedings; the physical and psychological recovery and social reintegration of the victims of rape, abuse, neglect, ill-treatment, violence or exploitation, in accordance with article 39 of the Convention; and the prevention of criminalization and stigmatization of victims. The Committee recommends that the State party seek technical assistance from, *inter alia*, UNICEF.

Corporal punishment

28. While the Committee is aware that corporal punishment is prohibited by law in schools, care institutions and the juvenile justice system, it remains concerned that corporal punishment is still permissible within families and that it is still regularly used in some schools and care institutions as well as generally within society. **The Committee recommends that the State party take effective measures to prohibit by law corporal punishment in care institutions. The Committee further recommends that the State party reinforce measures to raise awareness on the negative effects of corporal punishment and change cultural attitudes to ensure that discipline is administered in a manner consistent with the child's dignity and in conformity with the Convention. It is also recommended that the State party take effective measures to prohibit by law the use of corporal punishment in the family and, in this context, examine the experience of other countries that have already enacted similar legislation.**

6. Basic health and welfare

Primary health care

29. The Committee notes the State party's recent initiatives to improve the general situation of health and health services for children, including the introduction of the Integrated Management of Childhood Illnesses (IMCI) initiative and the provision of free health care to children under the age of six years and to pregnant and lactating women. However, the Committee remains concerned that health services in the districts and local areas continue to lack adequate resources (both financial and human). The Committee is also concerned that the survival and development of children within the State party continue to be threatened by early childhood diseases such as acute respiratory infections and diarrhoea. The Committee is also concerned about the high incidence of child and infant mortality as well as maternal mortality; the high rate of malnutrition, vitamin A deficiency and stunting; the poor situation of sanitation; and insufficient access to safe drinking water, especially in rural communities. **The Committee recommends that the State party reinforce its efforts to allocate appropriate resources and develop comprehensive policies and programmes to improve the health situation of children, particularly in rural areas. In this context, the Committee recommends that the State party facilitate greater access to primary health services; reduce the incidence of maternal, child and infant mortality; prevent and combat malnutrition, especially in vulnerable and disadvantaged groups of children; and increase access to safe drinking water and sanitation. Additionally, the Committee encourages the State party to continue its technical cooperation with respect to the IMIC initiative and, where necessary, to pursue additional avenues for cooperation and assistance for child health improvement with, *inter alia*, WHO and UNICEF.**

Environmental health

30. Concern is expressed at the increase in environmental degradation, especially as regards air pollution. **The Committee recommends that the State party increase its efforts to facilitate the implementation of sustainable development programmes to prevent environmental degradation, especially as regards air pollution.**

Adolescent health

31. The Committee expresses concern regarding the limited availability of programmes and services and the lack of adequate data in the area of adolescent health, including teenage pregnancies; abortions; drugs and substance abuse, including alcohol and tobacco use; accidents; violence; and suicide. The Committee expresses its concern at the lack of statistical data on the situation of children with mental health concerns as well as the insufficient policies and programmes for these children. The Committee notes that while the State party has taken a tough anti-smoking stance with the introduction of strong legislation in 1991 and amendments in 1999 to control the supply of tobacco, many under-age smokers are still able to buy tobacco products. While the Committee notes that the State party has launched a Partnership Against HIV/AIDS Programme (1998) which aims, *inter alia*, to establish counselling and treatment centres for people living with HIV/AIDS and sexually transmitted diseases (STDs), it remains concerned about the high and increasing incidence of HIV/AIDS and STDs. **The Committee recommends that the State party take effective measures to ensure that legislation is fully implemented and enforced, particularly as regards the use of tobacco products. The Committee recommends that the State party reinforce adolescent health policies, particularly with respect to accidents, suicide, violence and substance abuse. It is also recommended that the State party undertake a study to assess the situation of children with mental health concerns and introduce programmes to guarantee adequate care and protection for them. Additionally, it is recommended that the State party undertake further measures, including the allocation of adequate human and financial resources, to develop youth-friendly counselling, care and rehabilitation facilities for adolescents that would be accessible, without parental consent where this is in the best interests of the child. The Committee recommends the reinforcement of training programmes for youth on reproductive health, HIV/AIDS and STDs. These programmes should be based not only on gaining knowledge, but also on the acquisition of competencies and life skills that are essential to the development of youth. The Committee further recommends the full participation of youth in the development of strategies to respond to**

HIV/AIDS at the national, regional and local levels. Particular emphasis should be placed on changing public attitudes toward HIV/AIDS and identifying strategies to address the continued discrimination experienced by children and adolescents infected with HIV.

Children with disabilities

32. The Committee expresses concern regarding the inadequate legal protection, programmes, facilities and services for children with disabilities, particularly mental disabilities. **In light of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the Committee's recommendations adopted at its day of general discussion on children with disabilities (see A/53/41, chap. IV, sect. C), it is recommended that the State party reinforce its early identification programmes to prevent disabilities, establish special education programmes for children with disabilities and further encourage their inclusion in society. The Committee recommends that the State party seek technical cooperation for the training of professional staff working with and for children with disabilities from, *inter alia*, UNICEF and WHO.**

Traditional practices

33. The Committee is concerned that male circumcision is carried out, in some instances, in unsafe medical conditions. The Committee is also concerned about the traditional practice of virginity testing which threatens the health, affects the self-esteem, and violates the privacy of girls. The practice of female genital mutilation (FGM) and its harmful effects on the health of girls is also an issue of concern for the Committee. **The Committee recommends that the State party take effective measures, including training for practitioners and awareness-raising, to ensure the health of boys and protect against unsafe medical conditions during the practice of male circumcision. The Committee also recommends that the State party undertake a study on virginity testing to assess its physical and psychological impact on girls. In this connection, the Committee further recommends that the State party introduce sensitization and awareness-raising programmes for practitioners and the general public to change traditional attitudes and discourage the practice of**

virginity testing in light of articles 16 and 24 (3) of the Convention. The Committee recommends that the State party strengthen its efforts to combat and eradicate the practice of FGM and to carry out sensitization programmes for practitioners and the general public to change traditional attitudes and discourage harmful practices.

7. Education, leisure and cultural activities

34. The Committee notes the recent efforts of the State party to improve the situation of education, including the enactment of the Schools Act (1996), the introduction of an integrated National Primary School Nutrition Programme, and the launching of "Curriculum 2005" which is intended, *inter alia*, to correct the disparities in access to education. While noting that the law provides for compulsory education between the ages of 7 and 15 years, the Committee is concerned that primary education is not free. Concern is also expressed that inequality in access to education remains in some areas, particularly among Black children, girls and children from economically disadvantaged families, many of whom still do not attend school. The Committee is concerned about the continued practice of discrimination in some schools, particularly against Black children in racially mixed schools. With respect to the general situation of education, the Committee notes with concern the extent of overcrowding in some areas; high drop-out, illiteracy and repetition rates; lack of basic training materials; poorly maintained infrastructure and equipment; shortages of textbooks and other materials; insufficient number of trained teachers, particularly in traditionally Black communities; and low morale of teachers. The Committee notes with concern that many children, especially in Black communities, do not enjoy the right to leisure, recreation and cultural activities. **The State party is encouraged to continue its efforts to promote and facilitate school attendance, particularly among previously disadvantaged children, girls and children from economically disadvantaged families. In light of article 28 of the Convention, the Committee recommends that the State party take effective measures to ensure that primary education is available free to all. The Committee recommends that the State party take additional measures**

to ensure non-discrimination within the school environment. The Committee further recommends that effective measures be taken to improve the quality of education and to provide access for all children within the State party. In this connection, it is recommended that the State party seek to strengthen its educational system through closer cooperation with UNICEF and UNESCO. The State party is further urged to implement additional measures to encourage children to stay in school, at least during the period of compulsory education. In light of article 31, the Committee recommends that the State party take effective measures to ensure that children, especially those in Black communities, enjoy the right to leisure, recreation and cultural activities.

8. Special protection measures

Refugee and asylum-seeking children

35. While the Committee notes recent legislative reform to guarantee greater protection of the rights of refugee and asylum-seeking children, it remains concerned about the absence of formal legislative and administrative measures to ensure family reunification and to guarantee the right of access to education and health for refugee children. **The Committee recommends that the State party develop a legislative and administrative framework to guarantee and facilitate family reunification. Additionally, it is recommended that the State party implement policies and programmes to guarantee adequate access to all social services for refugee and asylum-seeking children. The Committee further recommends that the State party reinforce its efforts to finalize its adoption of the 1951 Convention relating to the Status of Refugees and the 1967 Protocol.**

Children in armed conflict

36. The Committee is concerned that insufficient efforts have been made to introduce adequate programmes to facilitate the rehabilitation of children affected by armed conflict during the apartheid era, whose situation is reflected in the current high levels of violence and crime within the State party. **The Committee recommends that the State party take all appropriate measures to introduce new and reinforce existing programmes to facilitate the rehabilitation and reintegration of children affected by armed conflict.**

Child labour

37. The Committee notes that the State party has signed a memorandum of understanding with the International Programme for the Elimination of Child Labour of the ILO to undertake a national survey with a view to compiling comprehensive national child labour statistics. While the Committee notes the State party's efforts to bring domestic legislation into conformity with international labour standards, it is concerned that over 200,000 children between the ages of 10 and 14 years are currently engaged in work, mainly commercial agriculture and domestic service. **The Committee encourages the State party to improve its monitoring mechanisms to ensure the enforcement of labour laws and protect children from economic exploitation. The Committee also recommends that the State party reinforce its efforts to ratify the Worst Forms of Child Labour, 1999 (No. 182) of the ILO.**

Drug and substance abuse

38. The Committee is concerned with the high and increasing incidence of drug and substance abuse among youth and the limited psycho-social and medical programmes and services available in this regard. **In light of article 33 of the Convention, the Committee recommends that the State party take all appropriate measures, including educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances and to prevent the use of children in the illicit production and trafficking of such substances. In this context, it is further recommended that programmes be reinforced within the school environment to educate children about the harmful effects of narcotic drugs and psychotropic substances. The Committee also recommends that the State party develop a national drug control plan with the guidance of the United Nations Drug Control Programme. The Committee also encourages the State party to support rehabilitation programmes dealing with child victims of drug and substance abuse. The Committee encourages the State party to seek technical assistance from, *inter alia*, UNICEF and WHO.**

Sexual exploitation

39. While noting the efforts of the State party to implement legislation, policies and programmes to prevent and combat the sexual exploitation of children, the

Committee remains concerned at the high incidence of commercial sexual exploitation. **In the light of article 34 and other related articles of the Convention, the Committee recommends that the State party undertake studies with a view to designing and implementing appropriate policies and measures, including care and rehabilitation, to prevent and combat the sexual exploitation of children.**

Sale, trafficking and abduction of children

40. The Committee notes the efforts of the State party to address the situation of the sale, trafficking and abduction of children, including the adoption of the Hague Convention on Civil Aspects of International Child Abduction, into domestic legislation. However, the Committee is concerned about the increasing incidence of sale and trafficking of children, particularly girls, and the lack of adequate measures to enforce legislative guarantees and to prevent and combat this phenomenon. **In the light of article 35 and other related provisions of the Convention, the Committee recommends that the State party take effective measures to strengthen law enforcement, and intensify efforts to raise awareness in communities about the sale, trafficking and abduction of children. The Committee further recommends that the State party seek to establish bilateral agreements with neighbouring countries to prevent the sale, trafficking and abduction of children and to facilitate their protection and safe return to their families.**

Minority groups

41. The Committee notes that domestic legislation guarantees the cultural, religious and linguistic rights of children, particularly as regards education and adoption procedures. The Committee further notes the State party's intention to establish a Commission for the Protection and Promotion of the Rights of Cultural, Religious and Linguistic Communities as a first step in guaranteeing greater protection to minorities. However, the Committee is concerned that customary law and traditional practice continue to threaten the full realization of the rights guaranteed to children belonging to minority groups. **The Committee recommends that the State party undertake all appropriate measures to ensure that the rights of children belonging to minority groups,**

including the Khoi-Khoi and San, are guaranteed, particularly those rights concerning culture, religion, language and access to information.

Juvenile justice

42. While the Committee welcomes the recent efforts to improve juvenile justice, it is concerned that the juvenile justice system does not cover all regions of the State party. The Committee is further concerned about:

(a) The lack of an efficient and effective administration of juvenile justice and in particular its lack of compatibility with the Convention, as well as other relevant United Nations standards;

(b) The length of time taken before juvenile cases can be heard and the apparent lack of confidentiality accorded to such cases;

(c) The use of detention as other than a last resort;

(d) The overcrowding in detention facilities;

(e) The holding of minors in adult detention and prison facilities, the lack of adequate facilities for children in conflict with the law, and the limited numbers of trained personnel to work with children in this regard;

(f) The lack of reliable statistical data on the number of children in the juvenile justice system;

(g) The inadequacy of regulations to ensure that children remain in contact with their families while in the juvenile justice system; and

(h) The insufficiency of facilities and programmes for the physical and psychological recovery and social reintegration of juveniles.

The Committee recommends that the State party:

(a) **Take additional steps to implement a juvenile justice system in conformity with the Convention, in particular articles 37, 40 and 39, and of other United Nations standards in this field, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty;**

(b) **Use deprivation of liberty only as a measure of last resort and for the**

shortest possible period of time; protect the rights of children deprived of their liberty, including the right to privacy; ensure that children remain in contact with their families while in the juvenile justice system;

(c) **Introduce training programmes on relevant international standards for all professionals involved with the system of juvenile justice;**

(d) **Consider seeking technical assistance from, *inter alia*, the Office of the High Commissioner for Human Rights, the Centre for International Crime Prevention, the International Network on Juvenile Justice and UNICEF, through the Coordination Panel on Technical Advice in Juvenile Justice.**

9. Dissemination of the reports of the Committee

43. Finally, the Committee recommends that, in light of article 44, paragraph 6, of the Convention, the initial report and written replies presented by the State party be made widely available to the public at large and that the publication of the report be considered, along with the relevant summary records and the concluding observations adopted thereon by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within the Government and the general public, including NGOs.

The World Organisation Against Torture (OMCT) wishes to extend its gratitude to Misereor and the Fondation de France for their support to the Children's Programme and to the Foreign and Commonwealth Office of the United Kingdom to the Women's Programme.

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Imp. Abrax F-21000 Chenôve – Photos: ILO